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ABSTRACT

This report contains digests of 80 court decisions with legal issues of particular interest to teachers. The material in the compilation comes from judicial decisions published during the 1969 calendar year in the National Reporter System. All but one of the cases are of a civil nature, the exception being an Illinois criminal case in which a teacher was accused of striking a student. The case digests are arranged under (1) eligibility and certification, (2) salaries, (3) contracts, (4) tenure, (5) school desegregation, (6) collective negotiation, (7) loyalty, (8) liability for pupil injury, (9) retirement, and (10) miscellaneous. The most important issues in terms of number of cases were teacher tenure, collective negotiations, and eligibility and certification. A related document is ED 056 405. (Author/JF)

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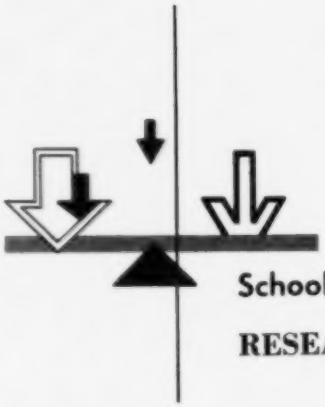

School Law Series

RESEARCH REPORT 1970-R8

The Teacher's Day in Court: Review of 1969

An Annual Compilation

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FOREWORD

THE AMERICAN JUDICIAL SYSTEM plays an important role in deciding questions that affect the American public-school teacher. Issues, such as civil rights of teachers, professional negotiations, contracts, salaries, and loyalty oaths as they affect teachers, have been ruled on by the courts in the past year. The impact of these cases may have far-reaching consequences for teachers and administrators not involved with the original action. This report contains those decisions which should be of interest and importance to all educators.

State and federal court decisions published during 1969 where teachers and other certificated personnel were plaintiffs or defendants are included in this publication, the 31st annual report in a series begun in 1939 by the NEA Research Division.

This report was prepared by Jeanette G. Vaughan, Senior Staff Associate, NEA Research Division.

GLEN ROBINSON
Director, Research Division

INTRODUCTION

THIS REPORT contains digests of 80 court decisions with legal issues of particular interest to teachers. The material in this compilation comes from judicial decisions published during the 1969 calendar year in the National Reporter System. While most of the decisions summarized here were rendered in 1969, cases decided earlier, but not in print until sometime in 1969, are also included. With some exceptions, litigants in these cases, whether plaintiffs or defendants, were teachers or other professional school personnel in the public elementary and secondary schools and publicly financed institutions of higher learning.

The 80 decisions originated in 25 states and the District of Columbia. All but one are of a civil nature. The exception is an Illinois criminal case where a teacher was accused of striking a student. A total of 63 decisions are products of state courts, with 25 from the highest tribunal of the state where the action was initiated; 27 are from intermediate appellate courts; and 11 from trial courts whose decisions are systematically published in the reference source used in the preparation of this report. The federal courts are represented by 17 decisions. Four decisions were rendered by federal circuit courts of appeals, and 13 decisions came from federal district courts.

Five states account for over one-half of the decisions appearing in this compilation, with New York State again in the lead, this time with 18 decisions. Other states with numerous cases were Florida and Louisiana with eight each and California and Michigan with seven each. The remaining cases were about evenly divided among the other states.

The case digests are arranged under the following 10 topic headings: (a) eligibility and certification, (b) salaries, (c) contracts, (d) tenure, (e) school desegregation, (f) teacher/school-board negotiation, (g) loyalty, (h) liability for pupil injury, (i) retirement, and (j) miscellaneous. When there is more than one case from a state under the same topic, the cases are listed alphabetically by title. Table 1 classifies the 80 decisions by state and major issue raised. Cases with more than one issue are cross-referenced.

As in previous years, issues relating to teacher tenure were again the most numerous with 22 cases appearing in this category in 1969. Professional negotiations again ranked second with 13 decisions. Certification and eligibility issues produced 11 decisions. The eight cases in the miscellaneous group include an action involving the right of teachers in Los Angeles to circulate petitions during school hours, two cases involving teachers who wore beards, and two cases involving alleged racial discrimination in promotions.

The summary that follows describes some of the major issues and significant cases presented in this report.

School Desegregation--An important issue raised in the courts in past years and with increasing frequency in 1969 was the assignment of teaching staffs to schools on a racially segregated basis. This question appears with regularity in school desegregation suits brought by or on behalf of Negro pupils. Since teachers themselves were not litigants in these cases, the summaries of the decisions are not given in this report, but may be found in The Pupil's Day in Court: Review of 1969, a companion school law publication of the NEA Research Division.

Included in this report, however, are six cases involving school desegregation where teachers were directly concerned as parties. Four of these cases involved Negro teachers who were not rehired following integration. In three of the actions, the teachers were successful. In Williams v. Kimbrough, the U. S. District Court for the Western District of Louisiana held that when there is a reduction in staff following integration, the equal protection clause and the due process clause of the Fourteenth Amendment require that the qualifications of all of the teachers in the system be evaluated by objective standards, and the least qualified be dismissed. Similar decisions were reached by federal district courts in Florida, Arkansas, and the Eastern District of Louisiana. In these cases the courts stressed that school systems may not racially discriminate against teachers in a reduction in staff nor may they

TABLE 1.--MAJOR ISSUES IN CASES INVOLVING TEACHERS IN 1969

State	Certification and eligibility	Salaries	Contracts a/	Tenure b/	School desegregation	Teacher/school-board negotiation	Loyalty	Liability for pupil injury	Retirement	Miscellaneous	Total cases
1	2	3	4	5	6	7	8	9	10	11	12
Alaska	...	...	...	1	...	...	...	...	...	...	1
Arkansas	...	...	1	...	1	1	...	...	...	...	3
California ...	2	2	...	2	...	...	...	...	...	1c/	7
Colorado	...	...	...	...	...	...	1	...	...	...	1
Connecticut ..	...	...	...	...	...	...	...	1	...	...	1
District	...	...	...	...	...	...	1	...	...	...	1
Florida	...	...	1	2	1	3	...	...	...	1d/	8
Illinois	1	...	...	...	...	...	...	...	...	2e/	3
Indiana	...	...	...	...	1	1	...	...	...	...	2
Iowa	...	...	1	...	...	...	...	...	...	...	1
Kentucky	...	1	...	...	...	...	...	...	...	...	1
Louisiana	...	...	...	4	2	1	...	...	...	1f/	8
Maine	...	...	...	1	...	...	...	...	...	...	1
Massachusetts	...	...	...	...	...	...	...	...	...	1d/	1
Michigan	...	...	1	5	...	1	...	...	...	...	7
Mississippi ..	1	...	...	...	...	...	...	...	...	...	1
Nebraska	...	...	-1	...	...	...	...	1	...	...	2
New Hampshire	...	...	...	...	...	1	...	...	...	...	1
New Jersey ...	...	...	...	1	...	...	...	...	2	1g/	4
New Mexico ...	1	...	...	1	...	...	...	1	...	...	3
New York	6	3	...	3	...	4	...	...	1	1h/	18
North Dakota .	...	...	...	...	...	1	...	...	...	...	1
Texas	...	...	...	...	1	...	...	...	...	...	1
Utah	...	...	...	1	...	...	...	...	...	...	1
Virginia	...	...	...	...	...	...	...	1	...	...	1
Washington ...	...	...	...	1	...	...	...	...	...	...	1
Total number of cases	11	6	5	22	6	13	2	4	3	8	80

a/ Also continuing contracts of the spring notification type.
b/ Also tenure-type continuing contracts.
c/ Involved the right of teachers to circulate petitions during school hours.
d/ Involved the right of a teacher to wear a beard.
e/ One case was criminal action against a teacher for allegedly striking a pupil and the other involved alleged discrimination in promotions.
f/ An action challenging the school board's necktie regulation.
g/ Involved alleged racial discrimination in promotions.
h/ Involved the refusal of university faculty members to appear before a grand jury.

apply criteria that would be racially discriminatory in deciding which teachers would be dismissed.

In the fourth case involving dismissed teachers, the court concluded that it did not have jurisdiction over the action because the teachers had brought suit under the Civil Rights Act against school officials in their official capacity. The court ruled that in this instance the officials were not "persons" under the act. Another case under this heading, Burns v. Board of School Commissioners of City of Indianapolis, Indiana, involved a suit by Indianapolis teachers who sought to enjoin the school board from involuntarily transferring them to achieve racial balance in the schools. In upholding the action of the school board, the federal court ruled that racial classification of teachers was proper in carrying out the mandate of Brown.

First Amendment rights--In 1968, the Supreme Court of the United States handed down an important decision pertinent to the First Amendment rights of teachers in Pickering v. Board of Education of Township High School District 205, Will County, Illinois. Two 1969 cases involving the rights of teachers turned on that decision. The decisions in both cases had been previously appealed to the Supreme Court, where they were vacated in light of Pickering and the cases remanded to the state courts for reargument. Opposite results were reached in the two rehearings.

On reargument of the Alaska case, Watts v. Seward School Board, the Alaska Supreme Court ruled that the doctrine of Pickering did not apply and distinguished the two cases on the facts. Pickering had held that teachers could not be constitutionally compelled to relinquish First Amendment rights they otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the schools in which they worked; however, the problem in each case was to balance the interests of the teachers as citizens to speak out, against the interest of the state as an employer in promoting the efficiency of the schools. The Alaska court said that factors present in Pickering in making the situation one of free speech were not present in Watts. The conduct of the Alaska teachers caused disruption and dissention in the school district. For that reason their dismissals were upheld.

The second case examined in the light of Pickering arose in New York. The teacher in that case was suspended without pay for one year on grounds of insubordination and unbecoming conduct because of a letter he addressed to the school board wherein he criticized its failure to re-employ a probationary teacher. On reconsideration, New York's highest court ordered the teacher reinstated because his comments, while indiscreet, came within free speech protection and, therefore, did not warrant disciplinary action.

Impairment of First Amendment rights of teachers was an issue in a Los Angeles case where the teachers union was forbidden by the school board to circulate petitions during duty-free periods because the board believed that the activity would create discord and disturb teachers who were trying to work. The petitions were directed to state officials opposing cutbacks in funds for higher education and urging an increase in funds for education at all levels. The California Supreme Court ruled that the teachers had the right to circulate the petitions during school hours since the school board had failed to demonstrate substantial disruption or material interference with school activities.

Also touching on First Amendment rights of teachers were two loyalty oath cases. Relying on previous Supreme Court pronouncements, the U. S. District Court for the District of Columbia enjoined the enforcement of a statute that would have required four appointees to the faculty of the Federal City College to swear or affirm that they would not knowingly become a member of an organization that advocated the overthrow of our constitutional form of government. The second case involved a loyalty oath which required every person employed to teach in Colorado state schools to swear or affirm that he would uphold the state and federal constitutions and faithfully perform the duties of his position. The federal district court found the oath to be proper and not vague or overbroad in violation of the teachers' constitutional rights. The Supreme Court of the United States affirmed the decision without opinion.

Professional negotiations--The number of 1969 cases concerned with teacher/school board negotiations continued at last year's high rate. The cases reported here, however, do not reflect all that were decided in this subject area this year since few of the trial court decisions appeared in the source material used for this publication.

Teachers in Dade County, Florida, were unsuccessful in their attempt to dissolve a preliminary injunction issued against them but did secure a jury trial on the contempt charges brought against the local association for violation of the injunction. The New Hampshire Supreme Court denied teachers a writ of prohibition to vacate the temporary injunction against a strike issued by the lower court. The higher court did not rule on any of the contentions of the parties, noting that the relief sought was an extraordinary writ and should be used only with caution and forebearance. In a third case the Indiana Supreme Court upheld an injunction prohibiting the Anderson Federation of Teachers from striking. The Indiana court disagreed with

the argument of the union that the state anti-injunction statute applied to strikes by public as well as private employees.

In Michigan, however, the Crestwood Education Association obtained reversal of a preliminary injunction against a teacher work stoppage granted by a lower court. The state supreme court remanded the case to the lower court for further proceedings consistent with the higher court's 1968 decision in the Holland case (157 N.W.2d 206), which held that it was insufficient merely to show that a concert of prohibited action by public employees had taken place and that ipso facto such a showing justified injunctive relief.

In the area of bargaining and representation, a New York trial court overruled a petition of the Public Employment Relations Board certifying the Poughkeepsie Area Summer School Teachers' Association as the exclusive bargaining unit for summer school teachers. The court concluded that the unit did not come within the definition of "employee organization" under the public employer-employee negotiation law. The court ruled that there was insufficient continuity of employment and that the summer session was too short to warrant the teachers' inclusion as a unit. In Dade County Classroom Teachers' Association v. Ryan, the Florida Supreme Court held that the teachers association was precluded from acting as the sole bargaining agent for all of the teachers in the system since not all had agreed that it act as their agent. The court also ruled that any privileges granted the association, such as dues check-off, places for meetings, and the use of inter-school mail facilities, must be granted to all organizations that represented the teachers in the system.

In ruling on the scope of negotiation legislation, a federal district court in Louisiana declined to grant a teachers union an injunction it sought to force a city college to bargain with it. The court noted that the statute neither commanded nor prohibited local agencies from bargaining with employee organizations and that the city's bargaining with other public employee groups did not mean that the city acted arbitrarily in refusing to bargain with the teachers union.

Other teacher/school board issues before the courts included an application for a stay of arbitration proceedings filed by a New York school board against a teachers association with which it had entered into a negotiated agreement. The association sought to submit to arbitration a question on the procedure used in discharging a nontenure teacher. In denying the stay of arbitration, the court ruled that while a nontenure teacher could not challenge the grounds for termination, the procedure utilized could be challenged. A California court sustained the constitutionality of the state negotiation statute for teachers which had been challenged by the California Federation of Teachers.

Other issues--Other issues presented in this report include two cases involving the right of a teacher to wear a beard. In the first case, a Negro teacher without tenure was not reappointed to his position in Duval County, Florida. The evidence established that the sole reason for nonreappointment was the refusal of the teacher to remove his beard. The federal district court ruled that the wearing of a beard by a teacher was a constitutionally protected liberty under the due process clause of the Fourteenth Amendment. Furthermore, where the beard is worn as "an appropriate expression of his heritage, culture and racial pride as a black man," the court said, its wearer enjoys the protection of First Amendment rights. The school board was ordered to reappoint the teacher.

The second case involving a bearded teacher reached the same conclusion but for different reasons. Again, a nontenure teacher refused to shave off his beard. In overruling the action of the school committee in dismissing the teacher, the federal district court found substantial due process deficiencies in the procedure used. The court, however, declined to rule on the constitutional question of the right of the teacher to wear a beard.

In Louisiana a tenure teacher refused to comply with the school-board regulation that he wear a necktie. As a result he was suspended for 30 days with his reinstatement conditioned upon compliance with the regulation. The court did not find the regulation so unreasonable as to violate the personal liberty of the teacher. However, because of the teacher's sincere belief that the regulation was invalid, the court directed the school board to consider him still under suspension even though the 30 days had elapsed and to reinstate him upon compliance with the regulation.

Faculty members at a state university in New York attempted to quash subpoenas requiring them to appear before a grand jury investigating possible drug abuse on the university campus. The faculty members alleged that their rights as teachers would be violated if they were required to appear. The highest state court disagreed, holding that while a statute that attempted to curtail the right of teachers to advocate the use of drugs and to discuss advocacy with an administrator would be unconstitutional, requiring a teacher to appear before a Grand Jury and discuss the matter is not.

In another case, a teacher who, as a member of the Utah House of Representatives, expressed strong opinions against federal aid for public

schools, caused friction between him and other teachers in the high school. When the superintendent transferred him to another high school, he refused the transfer and was dismissed. In upholding the dismissal, the state supreme court cited a regulation providing that teachers could be transferred for reasons which served the best interests of the employee and/or the schools. Refusal to accept the transfer constituted grounds for dismissal.

CERTIFICATION AND ELIGIBILITY

California

Jones v. Oxnard School District
75 Cal. Rptr. 836
Court of Appeal of California, Second District, Division 1, March 11, 1969.

The teacher sought injunctive relief against the school district and damages against school officials because of their failure to hire her in the school years 1960-61 and 1961-62. She alleged that she was a qualified elementary-school teacher; that she registered her credential with the superintendent; and that she applied for a teaching position in the school district. The teacher charged that the individual officials "improperly and unlawfully" denied her employment; and that the district employed a number of elementary-school teachers who were not duly certificated in violation of the law which provides for the hiring of noncertified teachers upon a showing that there are no qualified regularly certified teachers available. The teacher also alleged that the school officials falsely executed these statements of need. The trial court dismissed the action and the teacher appealed.

In affirming the dismissal of the action, the appellate court rejected the contention of the teacher that being certificated she was per se "qualified" so that the district was duty bound not to determine to the contrary or to file a statement of need. The fair meaning of the applicable statutory section, the court believed, empowered the district and its management personnel to determine whether a certificated applicant was otherwise qualified. That being the case, the district could not be mandated to exercise that power in a particular manner.

The court ruled further that the allegation of the teacher charging that the school officials caused statements of need to be filed in spite of the existence of her application for employment, was a discretionary action within the scope of their authority; therefore, under California law such action is privileged against tort liability.

Morrison v. State Board of Education
74 Cal. Rptr. 116
Court of Appeals, Second District, Division 2, January 6, 1969.

A teacher, whose certificate had been revoked by the state board, sought a writ of mandamus to review that revocation. The trial court denied relief and the teacher appealed. The trial court judgment was based upon the conclusion that the teacher had "committed homosexual acts involving moral turpitude and these acts constituted immoral conduct and unprofessional conduct within the meaning of the Education Code."

The evidence established that the teacher had engaged in homosexual acts with a consenting fellow teacher in private. The other teacher reported the conduct to the superintendent. The activity engaged in by the teacher did not constitute a crime under California law.

The question presented on appeal was whether the acts mentioned were "immoral" or "unprofessional" within the meaning of section 13202 of the Education Code. A previous California case had held that homosexual conduct was clearly "immoral" under the cited section. The teacher tried to distinguish that case on the ground that the acts there involved constituted a Penal Code violation and took place in public. The court was of the opinion that the fact that the teacher's conduct did not constitute a crime was not significant to the authority of the board to revoke his certificate. The code provided that conviction of a crime as well as immoral and unprofessional conduct were grounds for revocation. The immoral and unprofessional conduct sections, therefore, must refer to conduct not amounting to a crime.

There was no evidence that the homosexual character of the teacher in any way affected his capacity, ability, or willingness to perform in a satisfactory manner or that it had any effect on any of the pupils taught by him. In the view of the court, the lack of such evidence was not significant. The court could not say that there was no rational connection between the teacher's conduct and his fitness to serve in the public schools.

The judgment of the lower court was upheld.

Illinois

Crofts v. Board of Education of the City of Chicago
245 N. E. 2d 87
Appellate Court of Illinois, First District, Second Division, January 21, 1969.

A former high-school teacher of English appealed the summary judgment granted in favor of

the Chicago school board. She had been a tenure teacher when she contracted poliomyelitis which forced her to resign effective February 7, 1957. A rule of the board provided that the certificate of a tenure teacher shall remain valid for three years. The rules also provide for reappointment upon the passing of a health examination administered by a medical examiner selected by the superintendent of schools. After the expiration of the teacher's regular certificate, the board attempted to extend its validity until September 15, 1960. The Board of Examiners of the Board of Education refused to reinstate the teacher's certificate. As a result of the illness, the teacher was confined to a wheelchair and had been teaching on a temporary certificate at a high school for the physically handicapped where there were physical facilities to accommodate wheelchairs.

The teacher sought a regular teaching certificate and a money judgment equal to the difference between the substitute's salary she was paid and the salary to which she was entitled as an alleged holder of a regular certificate, as well as a money judgment for the school years since 1964-65 during which time she was denied an assignment. The teacher alleged that she had not been dismissed pursuant to statutes pertaining to tenure teachers.

The board argued that the teacher's regular certificate had expired on February 7, 1960, because she was unable to pass a medical examination. The board further alleged that its action which purported to extend the validity of the regular teaching certificate was a nullity because under its rules, the certificate had expired owing to time lapse and her inability to pass a health examination before the board extended its validity, and therefore the certificate could not legally be revived by any action of the board. The board stated that the teacher had been temporarily employed because of her plea that she needed three more years' teaching experience to be eligible for the maximum pension.

The court found a decision in this case necessary to interpret the board rules which provided that a teacher holding a valid certificate and who passes a health examination may apply for re-appointment; and that should such application be made during the life of the certificate, the certificate may be extended until the holder is offered a position. The court was of the opinion that the more reasonable interpretation of these rules was that the teacher must apply for reappointment prior to the expiration of the certificate and pass the health examination. Since the teacher did not pass the health examination as required, she could be dismissed without following the procedures enumerated in the tenure statute.

The judgment in favor of the board was affirmed.

Mississippi

State ex rel. Patterson v. Lee
218 So. 2d 434
Supreme Court of Mississippi, February 3, 1969.

A quo warrento proceeding was brought by the state of Mississippi questioning the right of a county superintendent of education to hold that office. The lower court dismissed the petition, and an appeal was taken. It was agreed by the parties that the superintendent did not hold nor was he eligible to secure a Class A certificate as required by law. The superintendent alleged, however, that he came within an exception written into the law which specified that the prescribed qualifications did not apply to any person who was serving as a county superintendent of education at the effective date of the act. The superintendent had been serving at that time but was subsequently defeated at the polls in 1963. In 1967 he ran again, was elected, and began serving in 1968. This petition was then filed.

The court found that the statute contained no requirement of continuity of service for an individual to come within the exception clause. The court ruled that since the classification by the legislature was not unreasonable, it would not read into the act a requirement of continuity of service.

The judgment of the lower court was affirmed.

New Mexico

Amador v. New Mexico State Board of Education
455 P. 2d 840
Supreme Court of New Mexico, June 16, 1969.

A certified and qualified teacher was elected to the state board of education. The state board had a resolution which required the suspension of the teaching certificate of a teacher elected to it. The teacher sought and was granted an injunction restraining the board from enforcing the resolution or suspending his certificate. The board appealed.

A state statute provided that a teacher's certificate could be suspended or revoked for incompetency, immorality "or for any other good and just cause." The board argued that the office of a member of the state board and that of a public-school teacher were incompatible, and, therefore, the suspension of the teacher's license was "for good and just cause."

An examination of the certification statute convinced the court that its purpose was to protect the public against incompetent teachers and to insure proper educational qualifications, personal fitness, and a high standard of performance. The "other good and just cause" for the

suspension of the certificate, the court said, must be related to this purpose. In the view of the court, the suspension of a teacher for incompatibility with membership on the state board did not fall within the purpose of insuring a high quality of public instruction.

Responding to the argument of the state board as to the ability of an active teacher to effectively and fairly carry out his duties as a board member, the court pointed out that the state board has jurisdiction over a school teacher only where he appeals to the state board from an adverse local board ruling. The court believed that if any case arose where a teacher who was also a member of the state board appealed from the decision of the local board, the teacher would simply excuse himself from consideration of his own case.

The judgment of the lower court in favor of the teacher was affirmed.

New York

Board of Education of the City of New York v. Nyquist
301 N.Y.S. 2d 776
Supreme Court of New York, Special Term, Albany County, June 16, 1969.

The sole question presented by the petition filed by the school board was whether the decision of the acting commissioner of education was arbitrary. The commissioner had ruled that a substitute teacher was a regular substitute teacher. The teacher had been assigned on the first day of the spring term to the class of a regular teacher who had suffered a stroke, and in fact taught the same class for the entire term. State law provided that a regular substitute teacher was one who was assigned within 15 days of the start of the term to a position open for a full term. The court ruled that the decision of the acting commissioner had a reasonable basis and dismissed the petition of the school board.

Coriou v. Nyquist
304 N.Y.S. 2d 486
Supreme Court of New York, Appellate Division, Third Department, October 20, 1969.

The teacher brought court proceedings to vacate an order of the acting commissioner of education upholding the decision of the board of education dismissing him. The lower court refused the relief and the teacher appealed.

On October 1, 1961, the teacher had been notified by his principal that he was rated satisfactory and was recommended for tenure effective on December 1, 1961. On October 27, 1961, the principal brought proceedings for the psychiatric examination of the teacher. The results were unfavorable, and the services of the teacher were terminated on November 30, 1961.

At issue before the court was whether psychological unfitness was sufficient to sustain the dismissal of a tenure teacher on the basis of incompetency. The court held that it was and that there had been sufficient medical evidence in this case for the board to conclude that the teacher was unable to perform his duties.

The decision of the commissioner was held to be neither arbitrary nor capricious and was therefore final.

Corsover v. Board of Examiners of the City of New York
298 N.Y.S. 2d 757
Supreme Court of New York, Special Term, Kings County, Part I, September 17, 1968.

An applicant for a regular license as a teacher of industrial arts passed all but the physical and medical examination portion of the examinations. He asked the court for a judgment directing the New York City Board of Examiners to give him a satisfactory rating on the physical examination and to issue him a license. Since 1961, the teacher had been a regular substitute teacher of industrial arts and had received superior ratings from the principal. At the time he took the physical examination for the substitute license there was some question as to his fitness because of a heart condition. Subsequently the teacher had a heart operation which it was alleged corrected the condition.

In 1966, the teacher applied for a regular license. He submitted to a physical examination in February 1967 and was found to be unfit by the medical staff of the board of examiners. The teacher was told that he could have a statement of reasons upon request, but when he requested the statement, it simply said "heart disease." The board asserted that "the conclusion of the medical staff was based mainly on the deterioration of petitioner's cardiac status." The court examined the records before it and could find no support for the determination that the condition of the teacher had deteriorated. Rather, there were clear objective rational findings in the reports of the teacher's doctors which indicated that he was physically able to perform his duties at the present and in the immediately foreseeable future.

The court ruled that the board's conclusion of "heart disease" and "deterioration" appeared to be based primarily upon surmise and conjecture. Under the circumstances the conclusion was viewed as arbitrary and unreasonable. Therefore, the determination of the board that the teacher was unfit for the duties in the position for which the license was sought was annulled,

and the board was directed to issue the license to the teacher.

Feingold v. Lynch
299 N.Y.S. 2d 606
Supreme Court of New York, Appellate Division, Second Department, April 1, 1969.

(See page 29.)

Kobylski v. Board of Education of Central School District No. 1.
304 N.Y.S. 2d 453
Supreme Court of New York, Appellate Division, Third Department, October 23, 1969.

The teacher brought proceedings to review a decision of the board of education which had dismissed him from his position. At the hearings held before the local board it was established that the teacher's provisional certificate to teach had expired and was not renewed by the state department of education. The court held that the failure to hold a valid certificate to teach is substantial evidence to support the finding of the local board that the teacher was incompetent within the meaning of the law.

The determination of the board of education was upheld.

Schwartz v. Bogen
300 N.Y.S. 2d 857
Supreme Court of New York, Appellate Division, Second Department, May 12, 1969.

(See Teacher's Day in Court: Review of 1967 p. 11; Review of 1966 p. 9.)

In a prior court action, the New York City Board of Examiners was ordered to furnish the teacher with the standard answers and rating directions to the essay portion of an examination for a certain teaching position. In the present proceedings, the teacher sought to punish the officials for contempt of court for their alleged failure to furnish the materials. The trial court denied the motion, and the teacher appealed.

The appellate court affirmed the order, but modified it by adding a provision that the board be directed to supply the teacher with all of the notes made by any person relative to the examination prior to the preparation of the checklist already furnished to the teacher. The court held that supplying the checklist together with these notes sufficiently met the requirement of an objective standard under the direction given by the New York Court of Appeals requiring that the board furnish the teacher with "all materials used in determining the correctness or quality of answers" to the essay part of the examination in question.

Turetsky v. Allen
301 N.Y.S. 2d 890
Supreme Court of New York, Special Term, Albany County, March 18, 1968.

The teacher sought to have her license validated as a regular teacher of Spanish in the junior high school. The commissioner of education moved to dismiss the petition for failure to state a cause of action. The teacher had been licensed as a regular teacher of Spanish in 1961. At that time she was notified that she would be required to complete 30 graduate credits by February 1965. In January 1966 she was notified that her license was being invalidated for failure to meet this requirement. She filed the proper administrative appeals, but the decision of the board of examiners was sustained.

While the teacher presented to the court an unquestioned record of excellent scholastic achievement and services to the profession and the community, the court concluded that owing to the nature of the matter, it could not evaluate the case on its merits. Since the decision of the commissioner was neither arbitrary nor illegal and was made in a solely educational matter, the court, could not overrule the decision. The motion to dismiss the teacher's petition was granted.

SALARIES

California

Eastham v. Santa Clara Elementary School District
76 Cal. Rptr. 198
Court of Appeal of California, First District, Division 4, March 20, 1969.

The school district appealed from a judgment compelling it to apply its salary schedule for certificated personnel to two school nurses. Both nurses were tenured and held the required certificates for their positions. Prior to the 1963-64 school year, nurses and elementary-school teachers were treated the same for salary purposes. In that year, the district changed its salary policy for school nurses so that while they still received the same starting salary as teachers, they were no longer allowed to advance beyond a certain point on the salary schedule. The nurses in this case had advanced beyond the maximum point established for nurses, and their salaries, therefore, were fixed at the level that they had then attained. The trial court ordered the district to pay their salaries as though the policy had never been changed and the district appealed.

By statute and judicial decisions, permanent certificated employees have a right to continue in the grade they have attained, but the governing board of a school district has the power to change or freeze the salaries of such employees. The school district contended that the original application of the teacher salary schedule to nurses did not constitute a board decision that the two would remain forever equivalent in rank, that it was not unlawful to treat nurses separately from teachers for salary purposes, and that its change of policy was not arbitrary.

The court ruled that because the same salary schedule was applied to nurses and teachers at one time did not establish that it was arbitrary and unreasonable to change that policy. The training and experience of teachers and nurses were not identical nor were their duties. The school board has the power to classify certificated employees, even those with tenure, differently according to training, experience, and duties. The court concluded that there was no showing that the board exercised this power arbitrarily.

The judgment of the lower court was reversed.

Shoban v. Board of Trustees of Desert Center Unified School District
81 Cal. Rptr. 112
Court of Appeal of California, Fourth District, Division 2, September 29, 1969.

Two probationary teachers whose salary classifications were changed sought to compel the board to restore them to their original classifications and to return the money withheld from their paychecks. The lower court granted the relief and the district appealed. Both teachers were hired for the 1965-66 school year, and their contracts were renewed for the 1966-67 school year. Early in the second school year it was discovered that their postgraduate units were a combination of semester and quarter hours. The quarter-hour units were converted to semester hours by a factor of 1.5. This resulted in both teachers having less credit, and consequently their salaries were reduced one level.

The policy of the district that gave credit for postgraduate work failed to specify semester or quarter hours. To remedy this omission, the board of trustees in October 1966 adopted a resolution, inserting the word semester before the words "unit" or "hour" in the policy. Two of the trustees testified that this was intended as a clarification not a change in policy.

The lower court had found that the salary schedule and the regulations made no distinction between semester and quarter units, and thus the October 1966 resolution constituted a change in policy, and an unlawful retroactive application of the new policy. The appellate court disagreed with these findings, since the testimony of the board members and of other teachers indicated that the policy had always been to count semester units and that other teachers in the system had had their quarter units converted for placement on the salary schedule. Accordingly, the reclassification of the teachers did not constitute a retroactive application of a change in policy.

The appellate court ruled further that the school district was estopped from collecting the alleged overpayments and was directed to repay the amounts withheld from the teachers' salaries.

Kentucky

Gullett v. Sparks
444 S.W. 2d 901
Court of Appeals of Kentucky, September 19, 1969.

Elementary-school teachers, both employed and retired, brought suit against the state superintendent of public instruction seeking an adjudication that they were entitled to salaries for past years higher than those that were paid. The teachers also sought an adjudication that they were entitled to continuing service contracts under Kentucky law. The lower court denied relief and the teachers appealed.

All of the teachers had received certification prior to 1934. At that time two years of college training was sufficient for certification, and a certain number of years of experience conferred life certificate status. All of the teachers were in this category. In 1934, the law was amended to require completion of four years of college for a standard certificate, but the pre-1934 certificates retained their status and validity. In 1954, when the first minimum salary law was enacted, teachers without a degree based on four years of college were classified in the lowest two ranks. Thereafter, five increases were enacted for the first three ranks, but only one small increase and no experience increments were provided for teachers in the lowest two ranks.

The teachers argued that the salary schedule was unreasonable and discriminatory with regard to the lowest ranks and that by virtue of holding "standard life" certificates they had a vested right to receive the same salary as that paid to a fully qualified teacher. The teachers contended that once they had qualified by statute for a certain position, they had a vested right to the position, and they could not be required to meet additional standards.

The court held that it was beyond question that the legislature could provide that pre-1934 certificates based on less than four years of college would no longer be valid and that holders of these certificates would receive only a minimum salary. "The fact that the motive of such a provision might be to make teaching so economically unattractive as to discourage the less-qualified teachers from continuing in service does not make the provision unfair, since the right of such teachers to continue in service might have been abolished entirely."

The court ruled further that the teachers were not entitled to continuing service contracts under the teacher tenure law, since that law specified that a standard certificate meant only a certificate issued on the basis of graduation from a four-year college.

The judgment of the lower court that the teachers were not entitled to increased compensation or continuing service status was affirmed.

New York

Board of Education, Central School District No. 1 v. Rickard
300 N.Y.S. 2d 472
Supreme Court of New York, Appellate Division, Third Department, June 3, 1969.

The school board sought a declaratory judgment as to its liabilities to two teachers. The trial court granted the motion of the teachers to dismiss the action, and the school board appealed.

The teachers had previously been employed by the school district to teach a single session of kindergarten each school morning. They had both been paid one-half the salary schedule for full-time teachers. The teachers subsequently sent a letter to the board demanding payment of the difference between their salaries and salaries for full-time teachers for the years in which they were employed as half-day teachers. The school board inquired of and was advised by the legal division of the state department of education that the teachers were entitled to the full salaries for their part-time performance of duties as teachers of a single session of kindergartens.

The board neither paid nor refused to pay the teachers, but instead brought a court action seeking a declaration of the rights of the parties. The teachers moved to dismiss the action on grounds, among others, that the court did not have jurisdiction because the board had not exhausted its administrative remedies.

The court held that a justiciable controversy existed between the parties which would have to be determined by an interpretation of various sections of the Education Law. Therefore, the board correctly invoked the remedy of an action for a declaratory judgment.

The teachers also argued that the board should have appealed to the commissioner of education before instituting court action. In this argument, they relied on a statute which provided that an "aggrieved person" could appeal to the commissioner. As to this argument, the court said that since the board had neither paid nor refused to pay the salaries it was not an "aggrieved person" as contemplated by the statute, and was not in a position to appeal. The board merely sought a legal determination of its obligations to the teachers.

The decision of the lower court was reversed on the law and on the facts.

Board of Education of Central School District No. 2 of the Town of Oyster Bay v. Nyquist
204 N.Y.S. 2d 441
Supreme Court of New York, Special Term, Albany County, September 26, 1969.

The board of education sought to set aside a decision of the acting commissioner of education. The commissioner had determined that a nurse-teacher was entitled to back pay for six years. The teacher had been paid for 15 years according to a salary schedule for nurse-teachers. The amount she received was above the statutory minimum but substantially less than the district paid classroom teachers. From time to time, the teacher had asked the board to classify nurse-teachers as teachers and pay them accordingly. A few months prior to her retirement the teacher appealed to the commissioner concerning her classification and seeking back pay for the 15 years. The commissioner held that she was entitled to back pay for only six years because of the statute of limitations. The commissioner found that where a district had adopted a salary schedule in excess of the state minimum, the schedule represented a mandated salary for that district. No reasonable basis was found for placing the teacher on a different schedule. In reaching this decision, the commissioner observed that a nurse-teacher is an important member of the instructional team, with specific instructional functions and with the educational preparation of a teacher.

The court noted at the outset that a decision of the commissioner is subject to markedly limited review by the courts. His decision is final unless it can be shown to be purely arbitrary.

The board argued that the education law vested it with the power to classify occupations and establish salary schedules. It further argued that the sole limitation placed upon its power was to refrain from establishing a salary differential based on sex. The court granted that the school board could establish salary schedules, but concluded that the board did not have the power to determine what employees are "teachers."

The board then argued that the commissioner did not have the power to review a decision of the board unless it was shown to be arbitrary. As to this argument the court said the board failed to establish that the commissioner was arbitrary in his finding that the decision of the board was unreasonable.

The court was of the opinion that the case involved a matter of educational or administrative policy in which the commissioner should be allowed to substitute his judgment for that of the local board even though the decision of the board was not arbitrary. The board did not possess any particular expertise in the classification of an employee as a "teacher." Moreover, the classification of an employee as a teacher should be uniform throughout the state.

The board raised several procedural objections, but the court did not find them to have any merit, and concluded that the commissioner did not act arbitrarily.

Central School District No. 2 of the Town of Oyster Bay, Nassau County v. Cohen
302 N.Y.S. 2d 398
District Court, Nassau County, First District, April 17, 1969.

The school district sought to recover from one of its former teachers the amount of salary paid to him while he was on sabbatical leave. The teacher had signed a written agreement which provided that if he did not return to the school district for a full school calendar year following expiration of the leave, he would return the full amount of the salary paid to him while on the leave. The teacher did not return to teaching in the school district nor did he refund the money.

The sabbatical leave had been granted for the spring term of 1966. In April 1966, the teacher indicated his intention to return to the school district for the 1966-67 school year, but in July 1966 he submitted his resignation and accepted a position elsewhere. He subsequently applied to the school district from which he had resigned for a newly opened position of assistant principal for the 1967-68 school year. The school district would not consider him for this position until the issue of returning the salary was resolved.

In response to the school district's motion for summary judgment, the teacher interposed six affirmative defenses. The first alleged that the teacher had continued to perform services for the school district on the district's health council without compensation. The court found this allegation to be without merit in view of the contractual obligation of the teacher to return to teaching in the school district or repay the salary he received during the sabbatical.

The second defense alleged that sabbatical leave is a reward for past services only, and that having waited eight years to apply rather than the usual seven, the teacher had thus served the additional year. The court ruled that leave with pay is not a matter of right because of past service regardless of the number of years.

The teacher's third allegation was that any infringement on sabbatical leave was in contravention of public policy. The court said that state law does not require a school district to

grant a leave with pay, and that if it does grant such a leave, a condition of future service may reasonably be imposed.

The fourth affirmative defense involved involuntary servitude. The court said that if the school district sought to force the teacher to perform his duties, an order would not be granted. However, the district sought instead the return of salary paid.

The final two contentions involved the refusal of the school district to appoint the teacher as assistant principal when he offered to return to that higher position. The court said that when the teacher went on sabbatical leave, he was a public-school teacher. There was nothing in the written agreement to suggest that the teacher had a right to expect to receive a higher position upon his return from leave. His offer to return at a later date did not constitute compliance with the contract provision requiring him to return at the expiration of his leave.

Summary judgment for the recovery of the salary was granted to the school district.

CONTRACTS

Arkansas

Freeman v. Could Special School District of Lincoln County, Arkansas
405 F. 2d 1153
United States Court of Appeals, Eighth Circuit, January 15, 1969.

Six Negro teachers sought to compel the school district to renew their annual contracts and in addition sought damages and attorneys' fees from the district, the school superintendent, and the principal of their school. In May 1967 the six teachers had received notice from the school district that their contracts would not be renewed for the 1967-68 school year. The notification was in accordance with Arkansas law and was given on the recommendation of the principal of the all-Negro school where the teachers were employed. The principal's recommendation was based generally upon his contention that the teachers were incompetent and uncooperative, and did not adhere to the chain of command in processing complaints. There is no procedure under Arkansas law for a hearing on the decision not to rehire a teacher.

The teachers alleged that the board refused to rehire them because of their race and the punitive motivation of the principal. The district court judge found no evidence that the teachers were terminated because of racial discrimination or because of any civil rights issue, and dismissed the case. The teachers appealed, asserting jurisdiction under the federal civil rights law and the due process clause of the Fourteenth Amendment.

The appeals court agreed with the district court that the evidence failed to sustain a cause of action under any provision of the civil rights act. There was no deprivation of any rights or privileges under color of any state law. No racial discrimination was shown at all. Stripped of the racial issue, the court said, the case presented no federal question.

The court noted that Arkansas has no tenure law for teachers. The board's right not to rehire teachers appears to be absolute as long as it is not based on grounds that are violative of the Constitution. The teachers argued that as a matter of federal due process they had a right to have their contracts renewed and receive damages for the failure to renew, citing many cases in support of this allegation. The court said that almost all of the cases cited were concerned with racial discrimination or invasion of a constitutional right or privilege by way of statute or regulation. The teachers cited no case that went so far as to say that all actions of any governmental board in employment cases must accord the individual due process under the Fourteenth Amendment so as to provide tenure and a right to retain the position except for cause. And "for cause" presupposes a right to hearing, notice, and appeal. Absent these security provisions, the court continued, a public employee has no right to continued public employment unless he was dismissed or not rehired for impermissible constitutional reasons.

The teachers also asserted that they were denied due process in that they were not given an opportunity to confront and cross-examine the principal. Although not required to do so, the board had accorded the teachers two hearings to present their side of their grievances. At no time had the teachers requested the opportunity to confront and cross-examine the principal at the hearings. The court did not feel that the cases cited by the teachers in support of their due process contention were germane to the precise issue of whether the due process clause requires an administrative hearing on the refusal to re-employ a teacher, with subsequent judicial review on a claim of arbitrariness. The court ruled that "absent statutory or contractual requirements, persons discharged for inefficiency, incompetency, or insubordination have no constitutional right to a hearing with rights of cross-examination and confrontation of witnesses."

The court did not think it within the province of the federal judiciary to pass upon and decide the merits of all of the internal operative decisions of a school district. But even if it were to pass upon the merits of the issue, the court did not think it could say that the school board was capricious or arbitrary, as the teachers claimed, in its attempt to resolve the dispute between the teachers and the principal. The court concluded that there was no civil rights issue presented and that the disagreement between the teachers and the principal was an internal matter to be handled by the school board. Further, no federal due process issue was presented. Judgment dismissing the case was affirmed.

Florida

Adams v. Board of Public Instruction of Okaloosa County, Florida
225 So. 2d 423
District Court of Appeal of Florida, First District, July 24, 1969.

An assistant principal was suspended for being absent from his position without leave, and his annual contract was cancelled by the local school board. He requested and received a public hearing at which time the board upheld his suspension and termination of contract. The principal then filed a petition in the circuit court of the county seeking judicial review of the board's order. That court dismissed the petition for lack of jurisdiction. This appeal followed.

The principal contended, and the appellate court agreed, that he had exhausted his administrative remedies since the right of review by the state board of education applies only where employment is on a continuing contract basis. The question was whether the county circuit court was the proper forum in which to bring the petition. The circuit court is appropriate if review of a final order of a purely local governmental agency is sought. If, however, review of the final order of a state agency is sought, the petition must be filed in the appropriate district court of appeal.

The question of whether the local school board was a local or state agency was therefore called into issue. Citing judicial precedent that a county school board was part of the state system of education, the court held that the order of the school board suspending the assistant principal and terminating his contract was entered by a state agency in the exercise of a quasi-judicial power; and as such a petition seeking review of that order must be filed in the appropriate district court of appeal. However, because of the confusion that surrounded the proper method of review in cases of this kind, the court believed that the interest of justice would best be served by preserving the principal's right to a review of the merits of his case. The principal was given 15 days to file any motions in the appropriate court.

Iowa

Griffith v. Red Oak Community School District
167 N.W. 2d 166
Supreme Court of Iowa, April 8, 1969.

An elementary-school teacher appealed the decision of the lower court which denied her claim for damages following an alleged breach of contract for the 1967-68 school year. The teacher had taught in the only building in the Coburg School district in the 1966-67 school year. On July 1, 1967, the Coburg district was placed in the Red Oak district. The teacher was given no notice of termination so that by law her contract was automatically continued. Her contract called for her to perform the duties of an elementary-school teacher and such other duties as may be assigned, more specifically, kindergarten, remedial reading, and physical education at the Coburg school.

At the time of consolidation Red Oak did not have actual knowledge of the teacher's contract and hired another kindergarten teacher for the Coburg school. When the school district learned of the contract, the teacher was asked to come to the superintendent's office where she was informed that her contract was recognized that she was assigned as a study hall supervisor at another school in the district, and that she was to attend the scheduled teachers' workshop. The teacher did not report to the workshop prior to the start of school, and on the first day of classes she reported to the Coburg school and said that she was ready to teach. The teacher never reported to the school to which she had been assigned and never rendered any service at either school. At a subsequent meeting of the Red Oak school board, at which the teacher appeared by counsel, the teacher was discharged for inattention to duty.

In defense to the teacher's suit, the school district alleged that the teacher was not qualified to teach physical education, that she failed to attend the teachers' meetings and workshop sessions, and that she failed to perform her assigned duties as an elementary-school teacher. The district also argued that the teacher's failure to perform her duties gave her no right of recovery for breach of contract. The teacher contended that the action of the district in employing another kindergarten teacher for the Coburg school and its refusal to permit her to teach kindergarten there constituted an anticipatory breach that made it unnecessary for her to do anything other than present herself at the Coburg school. The teacher argued that this breach occurred prior to the meeting of the board that resulted in her dismissal.

The district further alleged that the teacher should have appealed the decision of the board to the county superintendent as provided by law, and no jurisdiction vested in the court unless these administrative provisions were complied with.

The district court adopted the teacher's theory that her cause of action was for breach of contract that arose prior to the meeting at which she was discharged. However, the court found that the district did not repudiate the contract since the teacher had no valid certificate meeting state department of education requirements as required by her contract. Nor

did the court agree with the teacher's contention that the language of the contract was so specific that the teacher could be employed only at the Coburg school. The district assigned the teacher to duties that she was qualified for and legally certified to perform, and her failure to perform was not excused. Consequently she was not entitled to recover salary. The holding of the lower court was affirmed.

Michigan

Caddell v. Ecorse Board of Education
170 N.W. 2d 277
Court of Appeals of Michigan, Division 1,
June 23, 1969.

A probationary teacher was suspended by the superintendent for having violated school rules and regulations. Following a hearing the board of education discharged the teacher. The teacher appealed the decision of the board to the circuit court, seeking the salary due under his contract or alternatively, his salary from the date of suspension to date of dismissal. Summary judgment was entered in favor of the school board, and this appeal was taken.

The teacher raised two issues on appeal: (a) the refusal of the lower court to review the action of the school board in determining that an employment contract could be terminated; (b) the lower court's dismissal of an action for salary due.

The court ruled that the action of an administrative agency in probationary teacher cases is final and not subject to judicial review, if it is within the scope of its authority and is neither unreasonable nor arbitrary. In this case the grounds for dismissal were sufficient so that the dismissal was within the statutory authority of the board. There was no allegation by the teacher that the action was arbitrary or unreasonable. Therefore, the decision of the lower court upholding the dismissal was correct. The appellate court ruled, however, that the teacher was entitled to wages from the date of his suspension to the date of his dismissal.

Nebraska

Balka v. School District No. 53-J of Lisco
171 N.W. 2d 646
Supreme Court of Nebraska, October 24, 1969.

The teacher appealed the dismissal of her court action to determine the validity of her contract. The teacher had been employed for the 1967-68 school year. On March 1, 1968, the teacher was orally advised by the principal that her contract would not be renewed for the coming year. She received no written notice of termination from the secretary of the school board, and she filed no written notice of acceptance of automatic renewal of her contract. The school district refused to honor her alleged contract the following year.

The question presented on appeal was whether the teacher was required to file a written notice of acceptance of automatic renewal in order to claim that her contract had been automatically renewed by operation of law. The relevant statute provided that a teacher's contract shall be deemed to be automatically renewed unless the teacher was notified of termination in writing prior to April 15. The statute also provided that the teacher shall file written notice of acceptance with the secretary of the board within 15 days after receiving notice of renewal. Failure to file acceptance was deemed to be non-acceptance of the renewal.

The teacher contended that since there was no longer a provision in the statute for a requirement of notice of election to the teacher, written acceptance was no longer necessary. The school board contended that the notice of acceptance had to be given within 15 days after April 15, which was the last day that the board could notify a teacher of termination.

The court concluded that unless written notice of acceptance of automatic renewal is given by a teacher to the secretary of the board within 15 days of April 15, the contract is not renewed under the statute. Since the teacher in this case had given no notice of acceptance, her contract was not renewed.

TENURE

Alaska

Watts v. Seward School Board
454 P. 2d 732
Supreme Court of Alaska, May 12, 1969;
review denied 90 S. Ct. 890.

(See Teacher's Day in Court: Review of 1967. p. 21; Review of 1965, p. 19; Review of 1964, p. 22.)

In 1960, two tenure teachers were dismissed by the Seward school board after a hearing. The board found the teachers guilty of immorality for their part in compiling, reproducing, and distributing an open letter which was critical of the way the school superintendent administered the schools and which contained false statements disparaging him. In addition, one teacher was found guilty of immorality in that he held private conversations with various teachers in which he solicited their support to oust the superintendent. The immorality of the second teacher was a speech he made to a labor union about getting rid of the school board in view of the lack of success in ousting the superintendent. A separate ground for the dismissal was the failure of the teachers to comply with established grievance procedures.

The dismissals were sustained by the Alaska Supreme Court on two separate occasions. In their second appeal to the Supreme Court of the United States, the teachers contended that their dismissals unconstitutionally abridged their First Amendment rights of freedom of speech and association. On June 3, 1968, the Supreme Court (88 S. Ct. 1753) vacated the judgment and remanded the case to the state court for further consideration in light of the decision in Pickering v. Board of Education of Township High School District 205, (88 S. Ct. 1731 (1968)). In Pickering, the Supreme Court stated that teachers may not be constitutionally compelled to relinquish First Amendment rights they otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the schools in which they work; however, the problem in each case is to balance the interests of the teachers as citizens to so speak out, against the interest of the state as an employer in promoting the efficiency of the schools.

On remand, the Alaska Supreme Court compared the factual situation in Pickering with that in the instant case. The court noted that the first factor mentioned in Pickering was that the statements made by the teacher in his letter to the local newspaper relating to a proposed tax increase, were not directed toward any person with whom he would normally come in contact in the course of his daily work. Therefore, there was no question of maintaining discipline by an immediate superior or harmony among co-workers.

In this case, however, the open letter contained charges against the superintendent who was the immediate superior of the teachers in this relatively small school district. The court was of the opinion that the letter and the attempt to solicit support of other teachers to oust the superintendent could not help but be detrimental to discipline and harmony among the teachers and to the operation of the schools.

The court noted further that the second factor mentioned in the Pickering decision was that the subject matter of the letter was of legitimate public concern on which the judgment of the school administration could not be taken as conclusive. But here, unlike Pickering, none of the statements involved matters of expenditures of school funds or matters on which the public voted. Rather, the allegations were generally in the nature of grievances.

Thirdly, in Pickering, the only matters which were stated falsely were matters of public record which could easily be corrected by the school board and were stated in a manner consistent with good faith error. This was not true in the present case, the court said. All of the false statements reflected on the integrity and professional ability of the superintendent, and concerned matters closely related to the day-to-day operation of the schools. The court found that the false statements "were not consistent with good faith and were made in reckless disregard of the truth."

Lastly, the Alaska court said that in Pickering "the letter was treated by everyone except the board with massive apathy," whereas in Seward the open letter had been the subject of a controversy, serving as a prelude to an unsuccessful attempt to recall the school board.

Upon another review of the entire record, the court concluded that the doctrine of the Pickering decision could have no controlling application to the facts of the instant case. Therefore, the court reinstated its previous

decision upholding the dismissal of the teachers.

The Supreme Court of the United States declined to hear the case.

California

American Federation of Teachers, Local #1713, AFL-CIO v. San Lorenzo Unified School District
80 Cal. Rptr. 758
Court of Appeal of California, First District, Division 3, September 16, 1969.

A probationary teacher, as an individual and as president of the local teachers union, and the union itself, sought a writ of mandate directing the school district to re-employ the teacher for the next school year. The teacher had been dismissed under the statutory provisions applicable to probationary teachers following a hearing conducted by a hearing officer. The trial court had denied the writ, and this appeal was filed.

The teacher and the union contended first that the findings of the trial court were not supported by substantial evidence. The court determined that while there was conflicting evidence in the record on each of the charges against the teacher that, under the scope of judicial review available, only the evidence supporting the administrative decision should be considered. Applying this principle, the court held that there was substantial evidence to support the findings.

The teacher next contended that the charges, even if true, did not constitute appropriate grounds for dismissal. On this point, the court said that where there is substantial evidence to support the findings, and the causes for dismissal relate to the welfare of the schools and the pupils, namely inability to accept responsibility as a teacher, inadequately supervising pupils, and failure to follow district procedures, the court could not consider whether the charges justify dismissal.

The third contention of the teacher was that he was entitled to a copy of the hearing officer's proposed decision prior to its adoption by the board. The court ruled that neither due process nor California law required that this be done.

The final question on appeal was whether the lower court erred in holding that the union and the teacher as its president had no standing to sue. There was no allegation by the union or the teacher as its president that any right of either had been invaded, nor did either request any relief from the court. The appellate court ruled that both had failed to state a cause of action and that the trial court had properly dismissed them as plaintiffs.

Ward v. Fremont Unified School District
80 Cal. Rptr. 815
Court of Appeal of California, First District, Division 2, September 23, 1969.

A third-year probationary teacher and the local teachers union appealed from a lower court decision upholding the teacher's dismissal. Pursuant to statute, the district superintendent had given the teacher notice on March 10, 1967, that his services would not be required for the ensuing school year. The teacher and the union filed a timely request for a hearing, which was held before a hearing officer. On April 20, 1967, the hearing officer found that the charges against the teacher were unsubstantiated, did not constitute cause for dismissal under the statute, and recommended that the governing board not accept the superintendent's recommendation not to re-employ the teacher.

On May 15, 1967, the governing board met, heard additional evidence, and voted to disregard the hearing officer's recommendation and to affirm the superintendent's decision to discharge the teacher. The teacher was so notified. Thereafter, the teacher filed his first petition for a writ of mandate which alleged that at the May 15 meeting he was denied privileges granted by statute, including the right to cross-examine witnesses. The court agreed and directed that the governing board set aside its decision of May 15.

The board met on July 26, 1967, and rescinded its May 15 action. On August 9, 1967, the board met again and decided not to rehire the teacher based on the transcript of the hearing held before the hearing officer. On August 22, 1967, the teacher and the union filed another petition for a writ of mandate which alleged among other things, that since the governing board had not acted prior to May 15, the teacher was automatically rehired for another year pursuant to the statutes applicable to probationary teachers.

After a hearing, the trial court found the allegations of the teacher to be substantially correct. It further found, however, that the charges against the teacher had been proven and were supported by substantial evidence. Accordingly, the trial court entered a judgment in favor of the school district and this appeal ensued.

California law provides that final notice not to re-employ a probationary teacher must be given on or before May 15. The school district contended that the deadline was met by the notice given under the facts of this case. The court disagreed and held that the notice provided to the teacher was insufficent to meet the statutory requirements since it was not sent after full compliance with the statutory procedures including the right to cross-examine witnesses. Further, notice sent to the teacher

pursuant to the invalid proceedings of May 15, 1967, could not constitute a valid notice for the board action taken on August 9, 1967. Accordingly the decision of the trial court was reversed.

Florida

Board of Public Instruction of Broward County, Florida v. State ex. rel. Allen
219 So. 2d 430
Supreme Court of Florida, February 12, 1969; rehearing denied March 17, 1969.

(See Teacher's Day in Court: Review of 1968, p. 26.)

The local school board suspended a number of teachers for being away from their duties without leave. The teachers requested and received a hearing. At the hearing the board denied the motions of the teachers to have three members of the board disqualified. The teachers then petitioned the court for a writ of prohibition to force the board members to recuse themselves. The writ was granted and the board appealed.

The court said that in conducting a hearing to determine suspension or dismissal of the teachers, the board was acting in a quasi-judicial capacity. As such, justice requires that the accused be given a fair hearing before an impartial body. The court held that a county school board is an agency of the state and as such comes within the purview of the statute which prescribes grounds for disqualification of any member of any commission, authority, administrative body, or governmental agency existing under the laws of Florida. Therefore, the ruling of the lower court was proper.

Pred v. Board of Public Instruction of Dade County, Florida
415 F. 2d 851
United States Court of Appeals, Fifth Circuit, September 9, 1969.

Two teachers at Dade County Junior College brought suit charging that the school authorities had failed to renew their contracts for the fourth year because of the exercise of First Amendment rights of speech and association. If reappointed for the fourth year, each teacher would have acquired tenure. The teachers charged that they were not re-employed solely because of their participation in the local teachers association, and one teacher, because she advanced in her classroom lectures the new demands of campus freedom. Without giving reasons, the trial court dismissed the teachers' complaint for failing to state a cause of action. On appeal by the teachers, this decision was reversed.

The appellate court stated that it is settled law that while there is no constitutional right to public employment, such employment may not be subjected to unreasonable conditions. In this connection the court said: "The protections of the First Amendment have been given special meaning when teachers have been involved. Simply because teachers are on the public payroll does not make them second-class citizens in regard to their constitutional rights."

The court was not persuaded by the argument of the school officials that they only allowed the teachers' contracts to expire and therefore no rights were violated. This argument, the court said, misconceives the whole thrust of the teachers' claim, for the right sought to be vindicated was not a contractual but a constitutional right of public employees not to be punished by the state or to suffer retaliation because of the exercise of First Amendment rights.

The appellate court stated, however, that there are limitations on speech for both teachers and students, as reflected in the recent Supreme Court decisions in Pickering and Tinker. But as is pointed out in Pickering, the problem is one of balancing the First Amendment rights of teachers against the interest of the state, as the employer, in the efficient operation of the schools.

The court emphasized the limitations on the First Amendment rights of the teachers because they demonstrate why an ascertainment of the facts is indispensable to a determination of the rights of the parties. In reversing the trial court and remanding the case, the appellate court made it clear that it was not in any way intimating the acceptable outcome. But it did note that the two activities for which the alleged discrimination was meted out were quite different. One, relating to efforts to organize teachers for action, was quite removed from the classroom-schoolhouse variety, the court said. The other, involving activities in the classroom and the course of instruction, comes much closer to collision with the need for discipline within the classroom and the school as a whole and may well limit the extent and kind of expression protected by the First Amendment. Only on the basis of the facts can there be a determination of whether the denial of a continuing contract to the teachers was a reprisal for their actions in expression of ideas, thoughts, or associations rather than permissible nondiscriminatory professional evaluations, and if so, whether under the circumstances in relation to the reasonable demands of a system of organized responsible learning, their actions were protected.

Illinois

Crofts v. Board of Education of the City of Chicago
245 N.E. 2d 87
Appellate Court of Illinois, First District, Second Division, January 21, 1969.

(See page 10.)

Kentucky

Gullett v. Sparks
444 S.W. 2d 901
Court of Appeals of Kentucky, September 19, 1969.

(See page 15.)

Louisiana

Frank v. St. Landry Parish School Board
225 So. 2d 62
Court of Appeals of Louisiana, Third Circuit, June 27, 1969; rehearing denied July 24, 1969.

A tenure teacher and principal appealed the decision of the trial court which upheld his dismissal by the school board. The discharge was based on the finding that the principal was guilty of willful neglect of duty, of dishonesty, and of incompetence in his position.

In his appeal the principal alleged error in three respects: (a) there was a lack of evidence; (b) the court erred in permitting the introduction of the record of a criminal trial which took place subsequent to the school-board hearing; (c) the court erred when it upheld his dismissal as a teacher when the resolution of the school board did not charge him in that capacity.

In considering the evidence against the principal, the court looked at the three charges separately, and found that there was substantial evidence on all three grounds. A review of the trial court record convinced the appellate court that the evidence had been correctly analyzed and the conclusions had been correctly drawn. Portions of the trial court opinion which held that the school board was fully justified in dismissing the principal were adopted.

The second allegation of the principal was dismissed because there had been a pre-trial stipulation to the effect that the evidence contained in the criminal trial could be admissible. Likewise dismissed by the court was the third allegation of the principal that his vested rights as a tenured permanent teacher remained intact since he was charged only in his capacity as principal. Since the dismissal and judgment referred to him as both principal and teacher, the court felt that the resolution also charged him as a teacher, and it was of no significance that the resolution used the word "principal" instead of the words "principal and teacher."

Granderson v. Orleans Parish School Board
216 So. 2d 643
Court of Appeals of Louisiana, Fourth Circuit, December 2, 1968.

A tenure teacher who had been removed from his position by the school board, asked the court to reverse that action. The trial court had dismissed the suit, and the teacher appealed. Charges of "wilful neglect of duty and incompetency" had been brought against the teacher. After a hearing he was found guilty of those charges. The bases for the charges were that the teacher had been tardy on 73 days and absent on an additional 17 days during the 180-day school year.

The appellate court noted that in his petitions, the teacher did not allege that the hearing was not conducted in accordance with the statutory tenure provisions, nor was there any allegation of fact which if proven, would show that the school board acted arbitrarily, capriciously, or unreasonably in finding the teacher guilty.

The teacher did allege that he took a sabbatical leave for the first half of the 1966-67 school year for rest and recuperation, and at the conclusion of that leave the school board failed and refused to return him to work as a teacher. However, nowhere did the teacher make any allegation that he was prevented from presenting proof of these charges at the hearing. Even assuming the truth of the teacher's allegations of events that occurred subsequent to and unrelated to those on which the discharge was based, and assuming that the board was apprised thereof at the hearing, the court found them insufficient to reverse the decision of the school board that the teacher was guilty of being absent and tardy.

The main contention of the teacher was that he was entitled to a "full hearing" before the district court without the necessity of alleging facts that would warrant reversal of the action of the school board. The tenure statute provides that the teacher may petition the court for "a full hearing to review the action of the school board and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter." The court construed the statute to mean that an aggrieved teacher must allege facts in his petition for a court review which, if proven, would justify a reversal of the board's action. Since the petition of the teacher did not contain a denial of the charges, he was not entitled to a full hearing before the court. The lower court action was affirmed.

Hayes v. Orleans Parish School Board
225 So. 2d 131
Court of Appeals of Louisiana, Fourth Circuit, July 7, 1969; rehearing denied August 4, 1969.

A tenure teacher sought an injunction against the school board to prevent her demotion. The trial court granted the injunction, and the school board appealed. The teacher had been with the school system for over 20 years. She was selected to supervise Project Headstart in

May 1965. She subsequently supervised the Teachers' Aide Project until August 1968. Both of these were federally funded programs. In July 1968 the teacher was informed that she was being released from her position as supervisor and reassigned to her former position as consultant. The reason given for this action was the policy of the superintendent not to grant tenure to any employee under a federally funded program that was subject annually to a cancellation of funds. The reassignment resulted in a substantial reduction in salary.

The teacher contended that she had acquired tenure in her position as supervisor and that her reassignment was a demotion and a "removal from office" in violation of Teachers' Tenure Act. The court reviewed other Louisiana cases that had dealt with tenure and concluded that the teacher acquired tenure in her position of supervisor upon appointment and was not subject to the three-year probationary period. Even disregarding this holding and assuming for the sake of argument that service of a new probationary period was required, the court said, the teacher in this case still had tenure as a teacher and could not be removed without written reasons and without a hearing. As a permanently tenured teacher, she could not be reduced or demoted in status, position, or salary, without reasons and a hearing, even by the good faith abolition of her job.

The school board contended that the teacher could not have acquired tenure since she was only in a temporary federally funded position and was, therefore, only a temporary supervisor. The court said that there were no indications in the records that the teacher's positions were to be temporary as opposed to permanent. Because the programs were temporary did not necessarily indicate that her promotion to the position of supervisor was also temporary, and she would not acquire tenure in that position. The court stated that even if it were to assume that the teacher had not attained tenure in her position as supervisor, she had not been dismissed according to statute. Louisiana law provides that a probationary teacher can be dismissed only upon the written recommendation of the superintendent accompanied by valid reasons. This had not been done.

The court concluded that the teacher had acquired tenure as a permanent teacher and was not required to serve a three-year probationary term in each new level of promotion attained under the tenure law provisions then in effect. As a permanent teacher she could be dismissed, demoted, or transferred to a position of lower status, pay, and rank only after being notified in writing of the charges against her and a hearing on those charges. The only charges that would support action against a permanent teacher are willful neglect of duty, incompetency, or immorality, none of which were present in this case. The judgment of the trial court in favor of the teacher was affirmed.

Quina v. Orleans Parish School Board
224 So. 2d 835
Court of Appeals of Louisiana, Fourth Circuit, July 7, 1969; rehearing denied August 4, 1969.

An instructor in the practical nursing program sought reinstatement in her position, back pay, and damages. The teacher had been dismissed for failure to achieve the required college credits. The trial court granted summary judgment in favor of the school board, and the teacher appealed.

The teacher claimed that at the time that she was hired, the school board was aware that she did not possess a college degree and had little or no experience as a nursing instructor, but knew she was a licensed, professional nurse. She asserted that she was informed sometime during her employment that she should begin college to complete her degree but that she was never informed of the specific number of hours of credit required nor was any time limit set by the board as to when the courses should be started or completed. After more than two years of teaching, and after the teacher was enrolled in college, her employment was terminated for failure to comply with the requirement of the board that she obtain 18 credits within a reasonable time after her initial employment. The evidence differed as to whether the teacher was informed of the school-board requirement at the time of initial employment. The lower court had found no merit in any of the teacher's contentions and granted summary judgment dismissing the action.

In asking for a dismissal of this action the school board claimed that there were no material issues of fact in dispute and that it had followed proper procedures in dismissing the teacher under authority of the tenure statute which provided that a probationary employee could be dismissed at any time upon the written recommendation of the superintendent "accompanied by valid reasons therefor."

The record convinced the appeals court that there were material facts at issue which had to be decided before a determination could be made as to whether the school board had a valid reason for discharging the instructor or if it acted arbitrarily and capriciously. Therefore, the motion for summary judgment should not have been granted.

The school board additionally contended that the teacher had no right of action in tort for damages consisting of mental upset, humiliation, and embarrassment because of the alleged unwarranted discharge. With this the court agreed, on the basis that the school board is an agency

of the state and the state has not consented to be sued for damages of this type. However, if it is determined that the teacher was discharged without valid reasons, she would be entitled to sue for breach of contract to recover for lost wages and for reinstatement.

The case was remanded to the lower court for a trial on the merits.

Maine

Beckett v. Roderick
251 A. 2d 427
Supreme Judicial Court of Maine, March 21, 1969.

The plaintiffs are all teachers who had acquired tenure within the school system of their respective towns. Subsequently, the voters of their three towns and one other town created a Regional High School District (Regional) under a special law. When the new high school was finished, the school committee directed the superintendent to issue probationary contracts to all plaintiffs except one who was not rehired. The rehired teachers contended that these one-year probationary contracts were violative of their tenure rights. The teacher who was not rehired contended that her tenure rights were unlawfully severed. All sought injunctive relief to force the distribution of continuing contracts to them. The lower court denied relief and the teachers appealed.

The basic issue was whether a statute relating to the automatic assignment of teachers' contracts applied to the Regional which was created by a special law and was not formed or organized under the general laws of the state. The statute in question provided that when a school administrative district (SAD) becomes operative, the contracts between the municipalities in the district and all of the teachers shall automatically be assigned to the school administrative district.

The teachers urged that there should be no difference between school administrative units organized under general law, such as any SAD and Regional specially chartered by the legislature, particularly in the area of teachers' tenure rights. The court disagreed, saying that the "legislature can create at any time and in any case any other school administrative district by special act." It pointed out that the special legislation created only a regional high school; it did not affect the primary school system of the towns involved. Unlike the school administrative district law, the special act did not provide authority to Regional to request from the participating municipalities title to their former secondary-school property or the balance of money remaining in the accounts of the participating municipalities. Neither did the special act provide for the automatic assignment of teachers' contracts.

All the teachers had received letters from the school superintendent informing them that owing to the closing of the secondary-school facilities in their towns, their contracts were terminated. Maine law provides for the right to terminate a contract after due notice when changes in local conditions warrant the elimination of a teaching position. The teachers contended that having earned tenure they became entitled to automatic extension of their contracts unless they received the six-month nonrenewal notice. The court rejected this argument stating that tenure rights in the state are limited to the express provisions of the law creating these rights. Clearly the legislature did not intend to confer any special privileges or immunities upon the teachers at the expense of needed school consolidations, and tenure rights attached only in the system in which they are earned unless the law expressly provides otherwise. Regional was created as a distinct separate legal entity. It had the authority to elect teachers to serve in the Regional school and to fix their salaries without any limitation to teachers of the old high schools. The court said that it must be assumed that the legislature transferred the responsibility of secondary education to Regional on the ground that local conditions warranted the change. Failure to insert a saving clause in the special act to protect teachers of the old high schools indicated a legislative intent to leave the matter of election of teachers wholly to the discretionary judgment of the Regional school committee.

The court concluded that the automatic assignment of teachers relates specifically and applies only to the school administrative districts. It does not apply to Regional which is not of similar or identical pattern. Therefore, the teachers' contracts, notwithstanding tenure, were subject to and were properly terminated by the school committees of their towns by due notice in accord with law; and the Regional school committee was not obligated to elect any of them and the proffer of probationary contracts to those teachers it did elect was proper under the law.

Michigan

Caddell v. Ecorse Board of Education
170 N.W. 2d 277
Court of Appeals of Michigan, Division 2,
June 23, 1969.

(See page 20.)

Dodge v. Board of Education of the School District of the City of Saginaw
170 N.W. 2d 290
Court of Appeals of Michigan, Division 3,
June 24, 1969; rehearing denied August 1, 1969.

An elementary-school principal who had been relieved of her position as principal brought

suit against the school district seeking reinstatement. The trial court denied relief and the principal appealed.

The plaintiff had been a principal since January 1962. In February 1967, she was relieved of her duties as principal and offered the option of employment at her same pay either as a reading improvement coordinator or as a classroom teacher. She accepted the latter position with objection. In court she maintained that her employment contract granted her tenure as a principal and therefore she had been improperly demoted.

Under the tenure law, the term "demote" meant "to reduce compensation or to transfer to a position carrying a lower salary." The court held that since the position to which the principal had been reassigned carried, at least for her, the same salary, no demotion had occurred. The trial court judgment was affirmed.

Mullally v. Board of Education, Trenton Public Schools
164 N.W. 2d 742
Court of Appeals of Michigan, Division 1, September 26, 1968 (released for publication February 20, 1969).

A tenure teacher had been suspended from his duties because of alleged indecent acts he committed with a former pupil. At the teacher's request, a private hearing was held during the course of which the school board ordered that the charges be amended to name a person other than the former pupil as the person involved. The teacher made no request for continuance, but appealed the board's action. The court sustained the board. On further appeal, the lower court decision was affirmed.

In upholding this judgment, the appellate court stated that a hearing before the school board on charges against a tenure teacher is a quasi-judicial hearing and must provide due process. A due process hearing contemplates that all parties shall have the right to liberal amendment of the pleadings. The test of due process is whether there was surprise and if so, whether enough time was granted the surprised party to meet the new allegation. The teacher did not allege that the amendment to the pleadings occasioned surprise or that he had insufficient time for preparation. Therefore, the court held that the school board acted with propriety in permitting the amendment.

Munro v. Elk Rapids Schools
169 N.W. 2d 527
Court of Appeals of Michigan, Division 3, May 26, 1969.

A teacher who had completed the two-year probationary period brought an action for a writ to compel the school board to rehire him. A lower court denied the writ and an appeal was brought.

The sections of the Michigan tenure law relied upon by the teacher provide in part: (a) At least 60 days prior to the close of school each probationary teacher shall be rated satisfactory or unsatisfactory. Any probationary teacher shall be employed for the ensuing year unless notified in writing at least 60 days prior to the close of the school year. (b) After satisfactory completion of the probationary period, a teacher shall be employed continuously by the board.

The teacher was employed as a probationary teacher for two years and received satisfactory ratings. The board, however, declined to re-employ him for the third year. The teacher contended that once the school board has rated a teacher satisfactory for two years, it must rehire him. The position of the school board was that the statutes require two separate acts. First, the teacher must be rated satisfactory. Second, the board must decide to rehire him. If the board decides not to re-employ the teacher, its only duty is to notify him 60 days prior to the end of the school year. The school board argued that a teacher may be rated satisfactory, and yet the board may not, for some reason, wish or need to hire him. This being so, the statute did not impose a duty on the board to hire the teacher.

The court agreed with the school board's interpretation of the statutes. The decision of the lower court was affirmed.

School District of the City of East Detroit, Macomb County v. Karabetsos
168 N.W. 2d 654
Court of Appeals of Michigan, Division 2, April 21, 1969.

A second-year probationary teacher was handed a letter on May 31, 1966, stating that his contract would not be renewed for the next school year. A previous letter had been mailed on April 12, 1966, to his former address. The teacher requested a hearing at which his only contention was that he had not received the written notice 60 days before the end of the school year as required by statute.

The teacher appealed to the state tenure commission again relying on the lack of notice. The commission found that there was no proof that the April 12 letter was sent, that the school officials knew that the teacher was no longer living at the address to which the letter was sent, and that the teacher had not in fact received the letter. The commission concluded that the dismissal was improper, that therefore the teacher had tenure status.

The teacher was ordered reinstated with back pay.

The school district appealed to the circuit court which affirmed the holding of the commission. On further appeal, the school district maintained that the hearing given the teacher was such as was given to tenure teachers so that the 60-day notice requirement for probationary teachers did not apply.

The court disagreed with this argument, and upheld the findings of the tenure commission that throughout the proceedings the teacher was considered a probationary teacher, and that the 60-day notice requirement applies to tenure teachers also.

The judgment of the lower court was affirmed.

Wright v. Port Huron Area School District
163 N.W. 2d 673
Court of Appeals of Michigan, Division 2,
August 27, 1968; released for publication
January 22, 1969.

A teacher addressed a letter to the school district in October 1965, stating that he was under continuing tenure as a teacher and requesting assignment to a teaching position. The school board denied his request and the matter was taken to the state tenure commission. The commission ruled that the teacher had resigned his position by mutual consent on July 1, 1963, and therefore did not hold continuing tenure, but that he was entitled to back pay from October 11, 1962, the date he last taught until the end of the 1962-63 school term.

The county circuit court affirmed the commission's findings, but denied the unpaid salary. The teacher appealed.

The state teacher tenure act provides that a teacher on continuing tenure may be discharged or demoted only for reasonable and just cause and only after such charges, notice, hearing, and determination thereof as are provided by statute. In October 1962, the school district had suspended the teacher by letter and his salary then ceased. He was never presented with a copy of the charges nor afforded a hearing, as prescribed by the tenure act.

The school board explained its disregard of the statutory requirements by saying, on one hand, that the teacher was never discharged but resigned by mutual consent, and on the other hand, that felony charges brought against him in October 1962 disqualified him from the procedural protection of the statute.

The court could not excuse the school board's failure to follow the statute upon the grounds that it would have been a difficult matter and contrary to public policy for the board, upon learning of the felony charges, to file written charges against the teacher and hold a hearing immediately or at a later date. It is not for one or two individuals in the school system to decide if the tenure act will apply. The court ruled that the teacher, not having been afforded his statutory rights, had not been effectively discharged in October 1962, and that his salary should not have been terminated on that date. The court concluded there was sufficient evidence that the teacher resigned by mutual consent on July 1, 1963. Consequently he was entitled to back pay from the date of his suspension in October 1962 to the date of termination of employment in July 1963.

New Jersey

Rall v. Board of Education of the City of Bayonne
255 A. 2d 255
Supreme Court of New Jersey, July 2, 1969.

The issue in this case was whether the superintendent of schools had tenure in his position when the Bayonne school board undertook to terminate his services. The state commissioner of education determined that he did and ordered his reinstatement. The state board of education disagreed with this determination; its ruling was upheld by the lower court, and this appeal was taken.

The New Jersey tenure law provides that tenure shall be granted to enumerated professional school personnel, including superintendents, after three years unless a shorter period is fixed by the employing board. The superintendent in this case was originally given an employment contract of 2 years and 11 months. After he had been employed six and one-half months, the board adopted a resolution granting him tenure. On May 29, 1967, two days before the first contract would have expired, the board without warning or notice to the superintendent, adopted another resolution which recinded its earlier resolution granting tenure, and recited that the original contract was the only one that would be recognized, and that the employment was terminated as of May 31, 1967.

The lower court held that the statute authorizing the grant of tenure in a period shorter than three years did not contemplate the granting of tenure to a single individual. In its judgment the statute could be satisfied only by the adoption of a rule of general application to all employees or all employees of a group who could properly be considered as a separate class or to a distinct class which might reasonably consist of a single individual. However, tenure could not be given for short-term service to a particular individual on an ad hoc basis as was done here. Therefore, the board had no

power to pass the resolution and its revocation was valid. On appeal, this decision was reversed.

The state supreme court ruled that the original resolution of the board which purported to grant tenure to the superintendent was valid. Noting that the school board had acted in good faith in shortening the probationary period which under the statute it had power to do and in the belief that the resolution was the proper method to satisfy the statute, the court broadly construed the resolution and held that it shortened the tenure period for all superintendents of that district to six and one-half months of service, and that this period prevails and will continue until such time as the board should adopt another resolution fixing a different time. Accordingly, the court ruled that the superintendent had acquired tenure, and therefore he could not be dismissed without good cause and after notice and hearing. The board of education was directed to restore the superintendent to his position, and to all pension rights he had as of May 31, 1967, the date his employment was illegally terminated.

New Mexico

State ex rel. Brown v. Hatley
450 P. 2d 624
Supreme Court of New Mexico, February 17, 1969.

(See Brown v. Romero, Teacher's Day in Court: Review of 1967, p. 31.)

The school board appealed from a court order directing it to hold a hearing with respect to the termination of the employment of the teacher.

The teacher had taught for many years and was granted a leave of absence because of illness at the beginning of the 1958-59 school year. A resignation was submitted in her behalf in 1959 only for the purpose of obtaining disability retirement. She was never in fact given disability or other retirement. She returned to teaching for the 1960-61 school year and also taught the 1961-62 year. In May 1962 she was notified that she had not been rehired. The county board of education denied a hearing to the teacher on the basis that she was not a tenure teacher. Hearings were then scheduled before the state board, but no hearing was held on the merits.

In a suit brought by the teacher, the state supreme court ruled that the teacher's proper remedy was to bring an action in mandamus to compel the local board to grant her a hearing. The teacher did so, and it is from the lower court decision granting a hearing that the school board appealed.

The central issue was whether the teacher had effectively resigned in 1959 and therefore did not have the necessary consecutive service to qualify for tenure. The court noted that a resignation by a teacher is ineffective without the necessary intent to sever the relationship of employer and employee. It was conceded that the teacher's resignation was submitted solely for the purpose of obtaining disability retirement. The school superintendent knew that that was the purpose, and the circumstances of the resignation were inconsistent with a true resignation. "When a teacher submits a resignation and the parties understand that it is submitted for a purpose other than termination of employment, it is ineffective as a resignation." The court held that under the circumstances of this case, the resignation should be treated as a leave of absence.

The decision of the lower court was affirmed.

New York

Feingold v. Lynch
299 N.Y.S. 2d 606
Supreme Court of New York, Appellate Division, Second Department, April 1, 1969.

A teacher brought proceedings to annul a determination of the Brentwood Board of Education which dismissed him from his position. He also sought reinstatement and related relief. The teacher had been appointed to the school system in 1962 as a probationary teacher. At that time he possessed a state provisional certificate which mandated his completion of a certain course of study. In 1965 the school board granted the teacher tenure despite the fact that he had not completed the state requirements. Correspondence between the parties followed and in January 1967 the state education department advised the school board that the teacher's certificate had been voided, and since this rendered the teacher incompetent to teach in the state, that the teacher's services be terminated. Ultimately charges were preferred, a hearing was held, and the teacher was formally dismissed.

The only question before the court was whether there was substantial evidence to support the local board's determination. The court answered this in the affirmative. The teacher lacked a teaching license; he thus lacked one of the prerequisites to teach in the state. He had been accorded his rights under the tenure law, and it would have been illegal for the board not to remove him.

The court concluded that the teacher was afforded all of his rights and was properly dismissed.

Helsby v. Board of Education of Central School District No. 2
301 N.Y.S. 2d 383
New York Supreme Court, Columbia County; Special Term, Albany County, June 11, 1969.

(See page 41.)

Moses v. Board of Education of the City of New York
298 N.Y.S. 2d 442
Supreme Court of New York, Special Term, Kings County, Part I, March 14, 1969.

A tenured teacher in the New York City school system sought a judgment directing the board to (a) restore her to active duty as a teacher, and (b) to adjust her salary so that she would receive money lost as a result of being placed illegally on an inactive status without pay. The board claimed that the proceeding was barred as it was not commenced within the statutory time limit and additionally that the action of the board was proper and pursuant to its sick leave by-law.

The by-law in question provided that teachers who had exhausted their sick leave and were unable to return to school be placed on a leave-without-pay status. Such inactive status was to take effect one month after the sick leave had been exhausted. In this instance the teacher had not used all of her accumulated sick leave when the board placed her on inactive status. The board contended that since the teacher accepted pay for days for which she rendered no service, she voluntarily exhausted her accumulated reserve and hence waived her right to question the action of the board. The court disagreed with this argument, saying that the school board perhaps unwittingly or through misconception exercised a power it lacked in paying out public moneys for services not rendered.

The court found that the action of the school board was contrary to the specificity of the sick leave by-law, and that the action of the board sought the removal of the tenure teacher in violation of the state tenure law. The court also found no merit in the board's argument that the proceeding was barred by the passage of time.

In the view of the court the teacher demonstrated that she was not accorded due process and that the actions of the board were arbitrary and unlawful. The teacher was granted the relief that she requested.

Puentes v. Board of Education of Union Free School District No. 21, Town of Bethpage.
250 N.E. 2d 232
Court of Appeals of New York, May 28, 1969.

(See Teacher's Day in Court: Review of 1967, p. 10.)

A high-school teacher who was found guilty of conduct unbecoming a teacher and insubordination and who was suspended without pay, sought a review of the board's determination. The New York state courts upheld the decision of the board. The teacher appealed to the Supreme Court of the United States, which vacated the judgment in light of its decision in Pickering and remanded the case to the New York Court of Appeals for reconsideration.

The charges stemmed from a letter the teacher addressed to the school board, criticizing its failure to renew the contract of a probationary teacher, which he distributed to teachers and administrators in the school district. The letter contained some factual inaccuracies, and was written without the consent of the probationary teacher involved.

Upon reargument of the case, the New York Court of Appeals reversed the decision upholding the teacher's suspension. The court found that while the letter was indiscreet and embarrassing to the probationary teacher, the errors were not the result of reckless or intential falsehood. Since the distribution of the letter was limited to the school district and the contents were arguably within the free speech protection of Pickering, there was a lack of substantial evidence to warrant disciplinary action.

The court stated that there was no suggestion in the record that the teacher's indiscretions led to any deleterious effects within the school system and it was unlikely that they should have. "Indiscreet bombast in an argumentative letter, to the limited extent present here, is insufficient to sanction disciplinary action." Otherwise, the court added, "those who criticize in an area where criticism is permissible, would either be discouraged from exercising their right or would be required to do so in such innocuous terms as would make the criticism seem ineffective or obsequious."

Teachers of Huntington v. Board of Education, District No. 3
303 N.Y.S. 2d 469
New York Supreme Court, Special Term, Suffolk County, Part I, July 25, 1969.

(See page 42.)

Utah

Brough v. Board of Education of Millard County School District
460 P. 2d 336
Supreme Court of Utah, October 27, 1969.

The school district appealed from an adverse decision of the lower court which required it to reinstate a tenured teacher. The teacher was also a member of the state House of

Representatives. In that capacity he had expressed strong opinions against the use of federal aid to education programs in the public schools, some of them in use in the school district. This had caused friction between him and the other teachers at the high school where he taught. On October 13, 1967, the superintendent transferred him to another high school in the same district. He refused to accept this transfer, and his services were subsequently terminated for insubordination. The teacher filed suit and pending its outcome, obtained a temporary restraining order to prevent his transfer or discharge, and he stayed at the high school for the remainder of the school year. In the meantime he was notified in February 1968, that his contract would not be renewed for the following school year. He was offered a hearing but filed the present action instead. The lower court required the district to reinstate the teacher and to pay him the salary for the 1968-69 school year in which he did not teach. It was from this decision that the school district appealed.

Pursuant to statutory authority the local board adopted rules and regulations for the operation of the school district. Among these were regulations concerning the discharge of tenure teachers for cause and a regulation providing that the superintendent may transfer teachers for reasons which shall serve the best interests of the employee and/or the schools.

It was evident to the court that according to the statutory authority and the rules and regulations of the board all of which were part of the teacher's contract, that the teacher was required to accept the transfer when reasonably requested to do so, and that failure to accept the transfer rendered him guilty of insubordination. The court found that his contract was properly terminated. That the teacher was kept on the payroll following his refusal to accept transfer, the court said, was partly the result of the previous court order and partly the result of the district not wanting to terminate him so late in the school year. At no time, however, had the school district rescinded the termination order.

The case was remanded to the trial court with instructions to set aside the judgment in favor of the teacher and to enter a judgment in favor of the school district.

Washington

Whitner v. Davis
410 F. 2d 24
United States Court of Appeals, Ninth Circuit, April 3, 1969.

A tenured teacher who had been dismissed from her position at Washington State College brought suit against the individual trustees and the president of the College, the College, the State Attorney General, and the state of Washington. The teacher asserted jurisdiction under the 1964 Civil Rights Act and sought damages of $1.6 million and reimbursements. The district court dismissed the action for lack of jurisdiction and for failure to state a claim upon which relief could be granted. The teacher appealed.

The teacher had received a letter from the college president in June 1966, stating that because of unethical and unprofessional conduct, and insubordination, he was recommending her dismissal. She was notified that she could apply for a hearing and that failure to request such a hearing would be construed as acceptance of the dismissal. The teacher did not apply for a hearing, but wrote to the college president explaining why. The board of trustees met and approved the recommendation made for her dismissal.

The appellate court ruled first that there was jurisdiction over the subject matter of the claim and that it should not have been dismissed on grounds that the teacher had not exhausted her appellate remedy in the state court after her state court action was dismissed. The appellate court next considered the issue of failing to exhaust state administrative remedies. The teacher declined to apply for a hearing, and she alleged in her complaint that such a hearing would have been inadequate. The appellate court held that the issue of the adequacy of the state remedy to forestall a threatened discharge should not have been determined on a motion to dismiss or on a motion for summary judgment because the adequacy of the remedy is not ascertainable from the record. The disposition of the question must therefore await further proceedings in the district court.

The defendants claimed that the court did not have jurisdiction over the state of Washington because it had not waived its immunity. The court found this to be correct as to the state, but not as to the College and the individual persons named. The defendants also claimed that neither the state nor the College was a "person" under the Civil Rights Act. The court agreed as to the state and the College and ruled that the action was properly dismissed as to these two defendants, but not as to the individual defendants.

The teacher had never contended that the charges against her were unfounded, but rather than the administrative procedure open to her required her to surrender her constitutional rights. The appellate court did not undertake to assess the legal sufficiency of these allegations because the teacher lacked counsel and knowledge of the procedures available, and chose to appeal rather than file an amended complaint. Instead, the case was remanded to the district court to give the teacher an opportunity to amend her complaint and to receive a hearing on the merits of her claim. The decision of the district court was reversed.

SCHOOL DESEGREGATION

In addition to the cases reported under this heading, there are a number of other 1969 court cases initiated by public-school pupils for school desegregation which contained issues on assignment of teaching staffs on a racial basis. The summaries of these cases are not included here because this report is limited to digests of cases in which teachers themselves are litigants. Those interested in this aspect of teacher assignment are referred to the school desegregation cases in The Pupil's Day in Court: Review of 1969, another NEA Research Division school law publication.

Arkansas

McBeth v. Board of Education of DeVall's Bluff School District No. 1, Arkansas
300 F. Supp. 1270
United States District Court, E. D. Arkansas, June 20, 1969.

Two Negro teachers were not rehired for the 1968-69 school year following integration. These teachers, joined by the Arkansas Teachers Association, brought suit for reinstatement and damages. One of the teachers had been a home economics teacher and the other a principal of the now closed Negro high school.

The court reviewed decisions of the federal courts in the area of teacher displacement and noted that a school district may not discriminate against any teacher or administrator because of his race when there is a reduction in force following integration.

As to the home economics teacher, the court found that her qualifications had been compared with those of her white counterpart and the decision had been made to retain the white teacher. The superintendent gave as his reasons the facts that he had hired the white teacher one month before the Negro teacher and that the white teacher, in his estimation, had graduated from a "better" college. The court considered the first reason to be frivolous and the second to be invalid, in view of the evidence that the Negro teacher had 18 years' prior teaching experience in other school districts and was qualified to teach general science as well as home economics, whereas the white teacher had no prior teaching experience and was not qualified to teach any other subjects. The court concluded that the teacher's termination was racially discriminatory and unconstitutional. Since the teacher had found other employment for the school year at a higher salary, the court found that no damages had been sustained. But the court ordered the school district to offer to the teacher within two weeks re-employment for the 1969-70 school year as a home economics or general science teacher, this offer to be accepted or rejected within two weeks.

The case of the principal presented different problems. There was evidence that he was a less than satisfactory administrator and would have been terminated at the close of the school year regardless of the other circumstances. His qualifications were never compared with other administrators and the district had no intention at any time to retain him in the school system. While on the evidence the court found that the principal left something to be desired as an administrator, and would not have been considered seriously for re-employment, it also noted that he did not have much of a school to administer, and received only scant supervision, assistance, or counselling from his superiors. The court was of the opinion that the board found little fault with the principal as long as he was administering an all-Negro school and that its concern about his management arose only when it realized that keeping him in the system would or might entail giving him a position in the integrated school.

The court concluded that the discharge of the principal was racially discriminatory and awarded him damages of the difference between the salary he would have earned and what he did earn in the new position that he found. The court did not order that the principal be reinstated by the board, but rather ordered the board to evaluate his qualifications objectively and without regard to race and to see if a position, either as an administrator or an instructor, could be found. If the board declined to offer him re-employment, it must then file with the court a report giving the reasons for its action.

Florida

Knowles v. Board of Public Instruction of Leon County, Florida
405 F. 2d. 1206
United States Court of Appeals, Fifth Circuit, January 3, 1969

A Negro teacher in business education appealed from the denial of her request for a preliminary injunction by the lower court. The teacher had sought to force the board of public instruction to transfer her to a position in business education in a white school for the school year beginning in September 1966. She had filed a petition to intervene in a then pending desegregation case in 1966, which was allowed. That desegregation case was subsequently remanded to the district court so that it could be brought into conformity with the case of United States v. Jefferson County Board of Education which had just been decided. When the petition of the teacher was heard in February 1968, the trial court took the position that there was no requirement that the school district desegregate its faculty prior to the Jefferson mandate. All that was required of the school district was that it consider the application of the teacher for transfer without regard to her race.

The teacher, however, did not seek individual relief, but rather sought to be a party in a class action on behalf of all of the Negro teachers. The trial court had emphasized the fact that this teacher and every other white or Negro teacher had the right to be considered for appointment or transfer without regard to race, and that every teacher must be assigned without regard to race when application had been effected since May 1967, the date of the Jefferson decree. Any failure to carry out this provision could be brought to the attention of the trial court.

The appellate court concluded that it was not error for the lower court to deny the individual injunctive relief sought by the teacher.

Indiana

Burns v. Board of School Commissioners of City of Indianapolis, Indiana
302 F. Supp. 309
United States District Court, S. D. Indiana, Indianapolis Division, June 5, 1969.

Teachers brought a class action to enjoin the school board from involuntarily transferring them to achieve racial balance in the Indianapolis schools, and to rescind all mandatory transfers already made in compliance with a federal court order to end segregated schools in the city.

The teachers' action was originally brought in the circuit court of Marion County, Indiana, which issued a temporary restraining order prohibiting the board from transferring any teachers. The action was transferred to the federal court. In these proceedings the teachers sought to have the case remanded to the Marion County court. The school board asked for the removal of the temporary restraining order.

The federal court held that it did have jurisdiction over the action and that it was properly removed to the federal court. Federal law provides for the removal of certain civil rights cases involving state officials. The defendants in this case were officials and the case was properly removed.

The teachers asserted as a basis for their action that Indiana state law prohibits discrimination in education based on race. The teachers contended that only by considering their race can the school board transfer them and that this is contrary to law. The court noted that the primary purpose of the cited statute was to avoid and abolish discrimination against Negro pupils and teachers then existing in a few Indiana communities. The court found the interpretation the teachers placed on the statute to be completely perverse. On the contrary, decisions have held that in carrying out the mandate of Brown the states have necessarily and constitutionally based their desegregation plans on racial classification.

The temporary restraining order was dissolved.

Louisiana

Moses v. Washington Parish School Board
304 F. Supp. 1112
United States District Court, E. D. Louisiana, New Orleans Division, October 28, 1969.

The previous court order in this school desegregation case provided that the faculty could not be demoted or dismissed on a racially discriminatory basis. Five Negro tenured teachers who were not re-employed moved for an order of civil contempt against the school board and for an order to require the board to re-employ them, and reimburse them for any salary lost for not being employed at the beginning of the 1969-70 school year. The school board contended that only four of the five were tenured. The court disagreed, noting that the letter of termination sent to the one teacher did not contain any mention of unsatisfactory performance as required by the tenure law. In the absence of such a notification, the court found that the teacher had tenure at the end of his three-year probationary period.

The letter sent to all five of the tenure teachers was identical in that it gave reduction in staff owing to integration as the reason for dismissal. At the hearing, the board attempted

to prove incompetency as the reason for their dismissal. The court saw the issue as not whether the teachers were incompetent, but rather whether the previous court order had been violated by the failure of the board to re-employ the teachers. The court interpreted the previous order to mean that displaced personnel must be assigned to other positions, and that tenured teachers could not be fired except for good cause pursuant to the procedures contained in the tenure statute.

The school board contended that the court lacked jurisdiction over the matter because the teachers had failed to pursue their administrative remedies. However, the board had failed to institute the proper proceedings against the teachers, and for this reason, the court said, the board could not complain that the teachers did not exhaust administrative remedies. The court found that the board had technically violated the court order by failing to re-employ the teachers. A ruling on the civil contempt charges was reserved for 10 days to give the board time to comply with the order to rehire the teachers and reimburse them for lost salary.

In these proceedings, the school board sought to modify the previous order by ordering the reopening of one school that had been ordered closed. The Negro school children who were the original plaintiffs in the action did not have any objection as long as the reopened school was not racially identifiable. The court agreed that the school could be reopened and established attendance zones for the school.

Williams v. Kimbrough
295 F. Supp. 578
United States District Court, W. D. Louisiana, Monroe Division, January 28, 1969.

Four Negro former elementary-school teachers asked for and were granted leave to intervene in this school desegregation suit. They alleged that the school officials had dismissed them from their employment in violation of the decree in United States v. Jefferson County Board of Education, and in violation of the equal protection and due process clauses of the Fourteenth Amendment. The teachers sought reinstatement and award of back pay plus reasonable attorney's fees.

Each of the teachers was dismissed at the end of the 1967-68 school year as the Madison Parish schools were preparing for faculty integration. None had yet acquired tenure. They were replaced by white teachers in the school where these Negro teachers had held positions.

Two of the teachers were informed by the superintendent that they would be replaced by white teachers at the Negro school for the 1968-69 school year. They were further advised that it was against the policy of the board to transfer replaced teachers. An aide of the superintendent informed him that his remarks with reference to replaced teachers was in violation of the Jefferson decree. The superintendent then offered both teachers employment at a one-room school on a plantation some 60 miles away. There were no living accommodations there for both teachers and, according to one who visited the school, the building was "not in the best condition."

The third teacher was dismissed in April 1968 on the ground that his work had not been satisfactory. The sole reason for this judgment was the unruly behavior of some pupils on a field trip in the spring of 1967. The teacher was among some seven or eight teachers who accompanied the pupils and who were responsible for their supervision and behavior. The record was totally devoid of any other evidence of allegedly unsatisfactory professional performance by the teacher.

The fourth teacher was also dismissed for unsatisfactory performance. The deposition of the principal substantiated this allegation. The teacher maintained that she had been told she was being dismissed as a result of faculty integration.

The court said the equal protection and the due process clauses of the Fourteenth Amendment required that when teachers are displaced as a result of faculty integration, the qualifications of all teachers in the system must be evaluated by objective standards so that only the least qualified will be dismissed. In determining whether the teachers in this case were dismissed as a result of faculty desegregation, a long history of racial discrimination, coupled with a disproportionate number of discharges of Negro teachers, gives rise to rather strong inference of discrimination in the failure to re-employ Negro teachers in other schools. Such circumstances cast the burden of proof on school boards to show that failure to rehire was for nondiscriminatory reasons, and require that such proof be clear and convincing before failure to re-employ may be upheld.

The court held that in this case the board failed to meet that burden with respect to any of the dismissals. It ruled that the dismissal of the first two teachers was clearly the result of faculty desegregation and the choice of the other assignment presented to them could not remedy the situation.

The court ruled that the reasons given for the dismissal of the third teacher because of the field trip incident were neither clear nor convincing. Even if the one incident could provide a basis for dismissal, the court asked why the teacher was not dismissed at that time rather than one year later.

As to the fourth teacher, the testimony as to the reasons for the dismissal was in conflict and the testimony of some of the parties involved was not available nor were their depositions taken. Considering the entirety of the factors, the court held that the board had not met its burden of proof as to this teacher.

The court decreed that all of the teachers were to be given the first opportunity for any open positions in the system for which they were qualified. If there were no new openings, they must be objectively compared with all other teachers in the system, and if found to be superior to any, they must be given positions and the least qualified dismissed. Damages, including salary differences, if any, through the 1968-69 school year, and moving expenses were awarded to the teachers. The court denied attorney's fees because it did not feel that the dismissals were so "unreasonable" as to warrant this relief.

Texas

Harkless v. Sweeny Independent School District of Sweeny, Texas
300 F. Supp. 704
United States District Court, S. D. Texas, Galveston Division, June 6, 1969.

(See Teacher's Day in Court: Review of 1968, p. 39.)

Ten Negro teachers who were not re-employed by the school district brought suit seeking injunctive relief and money damages against the school district, the superintendent, and the individual board members in their official capacity for alleged violation of the teachers' civil rights in regard to failure to offer them re-employment. There had been a reduction in the number of teaching positions in the district following integration and the closing of the all-Negro school.

The case began in 1966 when 12 of the 17 teachers who were not rehired brought suit. The original suit named the defendents in their individual capacities as well as their official capacities, but at the time of trial, the teachers moved to dismiss all of the individual defendents, namely, the superintendent and the board members, in their individual capacities. This motion was granted. There has been much subsequent legal maneuvering and arguments and briefs by both sides. The court in this case was concerned only with the motion of the school district to dismiss the complaint.

The court concluded that it did have subject-matter jurisdiction over the case, but that the complaint must be dismissed for failure to state a claim upon which relief can be granted under the federal civil rights statute. This statute, upon which the teachers relied, provides for a civil action against every person who seeks to violate the civil rights of another. The court considered the legislative history of this statute and concluded that the statute did not include as "persons" the defendents in their official capacities.

TEACHER/SCHOOL BOARD NEGOTIATION

California

California Federation of Teachers v. Oxnard Elementary Schools
77 Cal. Rptr. 497
Court of Appeal of California, Second District, Division 1, May 1, 1969.

The California Federation of Teachers and its local, the Ventura County Federation of Teachers (Federation), appealed from an adverse decision of the lower court which denied their application for a writ of mandate, seeking the following: to require the school district to cease and desist from discriminating against them and from interfering with their activities; to cure the effect of any public statements made against the Federation by the district; to permit them to represent members as to grievances; and to force the employment of a teacher. As a second cause of action the Federation sought a declaration that the Winton Act was unconstitutional and other relief. The Oxnard Educators Association, an affiliate of the California Teachers Association (Association) filed a complaint in intervention defending the validity of the act.

The trial court had denied all requested relief, concluding that there was insufficient evidence of conduct which discriminated against the Federation, or against the individual teacher to merit her employment, and upheld the constitutionality of the Winton Act. This appeal followed.

The appellate court considered the central issue to be the validity of the Winton Act. That statute, enacted in 1965, provided for employment relations between public-school employees and the employing district. The main way that the Winton Act differs from other legislation regulating the employment relations of public employees is the provision for a negotiating council, to be composed of representatives of rival employee organizations when more than one such organization exists in a single school district. Membership on the council is to be based upon the proportion of certified employees belonging to the organizations represented. The Act directs the school district to meet and confer with the council on matters concerning working conditions and educational objectives.

The Federation first contended that the Winton Act was invalid because it removed public-school employees from the general category of public employees; it differentiates between certified and noncertified school employees; and it provides distinct treatment of certified employees through the medium of the negotiating council in districts having members in multiple organizations. In response, the court said that it is generally acknowledged that differences exist between educational public agencies and other public agencies, and for this reason the former have traditionally received different legislative treatment. The uniform operation of state law does not require the state to treat each citizen exactly the same but rather that laws "of a general nature" shall be "uniform in their operation."

The court noted that the principal differences between the Brown Act, which relates to other public employees, and the Winton Act are additional terms relating exclusively to employees in the educational field. As to the noncertificated employees, the court found that the treatment in the Winton Act relating to them was no different from the treatment accorded to employees in similar occupations under the Brown Act, so that "the convenience of separate codification can scarely be objectionable." The court found further that the distinctions created by the Winton Act between public-school system employees and other employees to be reasonable and justifiable.

The court also found nothing invalid about the negotiating council, and said: "The Winton Act is constructed upon the premise that all groups concerned with the subject matter (teachers and other school employees as well as administrators and school-board members) are genuinely and primarily interested in the welfare of schools and pupils and are willing, given appropriate means, to work harmoniously in order to secure the legitimate demands of school employees without detriment to the educational institutions." By requiring certificated employees who belong to competing organizations to work together through the negotiating council selected on a proportional basis, the court continued, the Act assures that a clearer statement of majority desires will be presented to the board.

The second contention of the Federation was that the conceded fact, that the Association

developed and supported the Winton Act, conclusively established that the Act is discriminatory, unfair, and invalid. The court found that while approximately 80 percent of California teachers are Association members, there was no evidence to support the claim that the Winton Act assured the self-perpetuation of that group. Contrary to the arguments of the Federation, the court said, the Winton Act does not deprive the minority organization from meeting and conferring as to individual member grievances or from presenting proposals directly to the school board. Nor was there evidence that the Oxnard negotiating council had failed to consider and incorporate the ideas and programs of the minority organization, or to meet and confer with the board about them. Also rejected as improper was the Federation claim that the council in effect was an exclusive bargaining agent for the majority organization selected without a secret ballot, in view of the holdings by the California courts that election by a secret ballot was contrary to the principles of the Winton Act. The court felt this complaint was unjustified because if exclusive bargaining were substituted for the council, the Federation would be left entirely without a voice.

The third contention of the Federation was that the Act represented an unconstitutional impairment of rights to freedom of association and of assembly because (a) the minority organization was deprived of the opportunity to present its programs directly to the board and (b) the names of its members were subject to disclosure. With respect to the disclosure of names, the court noted that the Act forbids interference with or discrimination against employees or the use of membership lists for any improper purpose. The court also noted that if minority organizations were permitted to present programs directly to the board, the thrust and purpose of the Winton Act would be thwarted. The legislative goal was to protect the public school system from highly partisan contests for representation and to attempt to reconcile the differences of organizations through a council. The court ruled that freedom of association was not impaired.

The fourth claim of the Federation was that the legislature could not constitutionally abridge the rights of public employees to assemble freely or petition their employer for redress of grievances. The court said that this claim was a refusal of the Federation to acknowledge that the Winton Act permitted direct representation before the board in matters relating to individual grievances.

The court could not sustain the fifth contention that proposed amendments to the Winton Act signified general recognition that the Act was defective and invalid. The court said that it would be presumptuous either to assume that modifications were proposed to obviate statutory unconstitutionality or to interfere with legislative prerogative on that basis.

Since after "having carefully considered the problem of employment relations in the public school systems the legislature arrived at a sound statutory determination of its tentative solution," the court concluded that it had a duty and an obligation to sustain the Winton Act.

The Federation also sought an injunction against interference by the district, contending that the evidence introduced at the trial proved that the district engaged in specific acts of misconduct with the intent to produce a discriminatory or derogatory effect and with a result in fact detrimental to the Federation. The court found that the Federation failed to sustain the burden of proof with respect to these allegations. The court ruled that the events constituting the only three proved episodes had no substantial merit and failed to establish a pattern of conduct adverse to the Federation upon which the right to an injunction might be based.

The Federation also sought re-employment of a teacher whom it claimed was discriminated against because of her Federation affiliation and activity. The teacher had taken a leave of absence for the 1964-65 school year. At the conclusion of the leave she informed the district that she did not intend to return to teaching at that time. Her resignation was accepted. The trial court found that one reason this teacher was not rehired when she reapplied was that there were no positions available in the district. The court ruled that an unemployed teacher has neither a constitutional nor a statutory right to employment in a particular district. Alternatively, there was evidence to support the finding that another probable reason was the teacher's personality conflict with the school board. This conflict, the appellate court said, constituted a legitimate ground for the board to exercise its discretion not to reemploy the teacher. The court found no discriminatory activity on the part of the board for its failure to hire the teacher.

The judgment of the lower court was affirmed.

Florida

Dade County Classroom Teachers' Association v. Rubin
217 So. 2d 293
Supreme Court of Florida, December 10, 1968; rehearing denied December 20, 1968.

The court consolidated for consideration three appeals by the Dade County Classroom Teachers' Association. The appeals were taken from an interlocutory injunction entered against

the Association in the Dade County Circuit Court, and an order of that court finding the Association in contempt and imposing a $30,000 fine for violation of the injunction.

The Association sought to dissolve the injunction, alleging deprivation of the rights of speech, assembly, and petition. The injunction was issued against the Association and its members to restrain them from engaging in a strike against the Dade County school board and from "performing any act or acts which would bring about a strike or work stoppage or a threat to strike on the part of teachers under contract with the Dade County school board, or prevent the resumption of normal activities of the teachers and students." The court rejected the constitutional objections to the injunction, citing its 1968 decision in Pinellas County Classroom Teachers Association v. Board of Public Instruction (214 So. 2d 34) that strike prohibitions against public employees are valid.

The Association had been cited for contempt for violation of the injunction. It appealed this decision on the ground that the lower court rejected its request for a jury trial. The appellate court upheld the Association in its characterization that the proceeding was one for criminal contempt for which the rules in effect at that time prescribed a right to a jury trial. The court ruled that the denial of the Association's motion for a jury trial by the lower court was error. The penalty for contempt was reversed, therefore, and the case was remanded for further disposition.

Dade County Classroom Teachers' Association, Inc. v. Ryan
225 So. 2d 903
Supreme Court of Florida, July 9, 1969; rehearing denied September 11, 1969.

Two rival teacher groups sought an injunction and a declaratory judgment against the school board and the Dade County Classroom Teachers Association (CTA). They objected to personnel policies the board adopted after negotiations with the CTA. These policies provided that CTA was to be the sole collective bargaining agent for all teachers in the system and gave the CTA, but not the rival groups, privileges such as dues check-off, use of mail facilities, bulletin board space, furnishing of teacher lists, and the right to hold meetings on school property. The trial court granted an injunction and held that collective bargaining by public bodies is not permitted by the public policy of the state of Florida. The court further held that the action of the board in granting privileges to the CTA which were not granted to the other two organizations was discriminatory. The court also ruled that the establishment of a grievance procedure run by a majority group was discriminatory and unconstitutional. The CTA appealed this decision.

The state supreme court ruled that the interpretation given to the state constitution by the lower court was erroneous in that it ruled out any type of limited collective bargaining for and on behalf of public employees through a labor organization. The higher court held that with the exception of the right to strike, public employees have the same rights of collective bargaining as do private employees. The court held further that the statute (section 839.221) which provides that no person or group of persons by intimidation or coercion can compel any employee to join or refrain from joining a labor organization, was compatible with the provision in the state constitution granting employees through labor organizations the right to bargain collectively. The court concluded that this statute, rather than any other, governs the rights of public-school teachers and the authority of school boards in the area of collective bargaining.

Construing the statute as disallowing any labor organization from representing any nonconsenting public employee, the court ruled that the CTA was precluded from acting as the sole bargaining agent for all the teachers in the school system since it was apparent from the record that not all the teachers had agreed that it act as their agent. But the CTA could represent all those teachers who are its members or those nonmembers who give it their consent.

The court also ruled that there could be no dues check-off except in those instances where the teacher agreed and then only for the existence of his current teaching contract. The court saw no objection to the board's allowing CTA the use of interschool mail facilities or bulletin board space, or furnishing the CTA with teacher lists and allowing it to hold meetings on school property provided the same privileges are made available to all teachers or their collective bargaining agents, and provided the board at any time in its sole discretion could cancel these privileges. Nor could any grievance procedures agreed to between the board and the CTA apply to any nonconsenting teacher.

The case was remanded to the lower court for further proceedings in accordance with this opinion.

National Education Association v. Lee County Board of Public Instruction
299 F. Supp. 834
United States District Court, M. D. Florida, Ft. Meyers Division, May 13, 1969.

A class suit was brought by individual teachers, the National Education Association, and the Florida Education Association contesting the imposition of $100 fines paid by about 400 teachers as a condition of returning to their

employment. The suit also asked judgment reinstating with lost pay those teachers who refused to pay the fine.

In early 1968 an educational crisis gripped the state during which over 400 Lee County teachers submitted their resignations to the school board. These resignations were accepted. Following the passage of an educational appropriations bill the situation eased, and an attempt was made to get the teachers back to the classrooms. The teachers wanted to return to their old status. The board also wanted them back, but as new teachers, with reduction in salary and loss of tenure rights and other benefits. A proposal acceptable to both sides was worked out by private citizens. First proposed was that the teachers would be reinstated as first-year teachers for the remainder of the 1967-68 school year, and that those who were allowed to come back for the 1968-69 school year would be restored to their former status. This proposal was unacceptable to the teachers. A compromise accepted by both sides provided that teachers who wished to return pay a $100 fine and be restored to their previous status. Five teachers refused to pay the fine and were not allowed to return to the classroom.

The teachers contended that a fine imposed for an unspecified wrong, without legislative authority, without legislative specified penalty, and without any form of process violates the due process clause of the Fourteenth Amendment and is a constitutional violation whether the fine is imposed directly or is made a condition of returning to work at their old status. The school officials argued that the payment was not a fine, and even if it was, the board had the authority to impose a reasonable fine; and in any event the teachers were foreclosed for objecting to the fine because they agreed to its payment.

The court held that the payment was a fine. The evidence showed that the school board felt that the teachers were guilty of wrongdoing and wished to punish them. The argument of the board that the payment was part of a bargain made by the teachers to obtain their old status back when legally the board was not obligated to consider them anything but new teachers, was regarded by the court as an afterthought to justify the payments.

Contrary to the argument of the board, the court ruled that the board had no authority to impose the fine, for under Florida law a grant of general authority to school boards does not permit them to impose fines. Therefore, the court concluded that the board could not sell to the teachers the benefits of their prior status for $100. The teachers were returned to their prior status by the retroactive revocation of the school board's acceptance of their resignations. The court did not believe that Florida law authorized the board to accept payment as an inducement to take this action.

The court also held not only that the fine was invalid because it was imposed without legislative authorization, but also that the punishment did not meet the requirements of due process because it was imposed for an unspecified wrong and without any process or procedure for determining guilt or innocence in each individual case. There were legislative procedures for dealing with specified wrongs of teachers, the court said, but the Lee County board chose to ignore these and to fix a penalty of its own after the fact and without authorization.

Nor was the validity of the fine saved by the fact that it was imposed as a condition of the teachers' returning to work rather than being imposed directly. Further, the fact that the teachers agreed to the payment of the fine did not strike the court as constitutionally significant. The teachers were faced with paying the fine and returning to work or not returning to work at all.

The court granted summary judgment to the teachers, and ordered the school board to return the payments to the teachers and to reinstate with lost pay those teachers who had refused to pay the fine. The school officials were enjoined directly and indirectly from taking any retaliatory action against any of the teachers who accepted the return of the fine or supported the litigation.

Indiana

Anderson Federation of Teachers v. School City of Anderson
251 N.E. 2d 15
Supreme Court of Indiana,
October 1, 1969.

A lower court had found the Anderson Federation of Teachers in contempt of court for violating a restraining order which directed it and its members to refrain from picketing and striking against the school district. The teachers union appealed.

The injunction had been issued without notice one day after the teachers went out on strike apparently over dissatisfaction with negotiations concerning the salary schedules for the next school year. The injunction was ignored by the teachers, and the contempt action followed four days later.

The union argued that the state anti-injunction statute was applicable to disputes concerning public employees. The court was of the opinion that the statute applied only to disputes between unions and private employers. The

court said that "the overwhelming weight of authority in the United States is that government employees may not engage in a strike for any purpose." The court cited many decisions that had reached this conclusion. For these reasons the court ruled that the decision of the lower court was correct.

An appeal has been filed in the Supreme Court of the United States. (38 U. S. Law Week 3466)

Louisiana

Beauboeuf v. Delgado College
303 F. Supp. 861
United States District Court, E. D. Louisiana, New Orleans Division, August 25, 1969.

A teacher and her union, the American Federation of Teachers, Local Union #1130, AFL-CIO, sought an injunction against termination of her employment by a city college and an injunction against harassment by the college of the teacher and others because of union activities. The teacher was one of 91 nontenure teachers whose contracts were not renewed because of a severe financial crisis at the school which required that many courses be discontinued. The union had been increasingly active at the school during the financial difficulties and had sought exclusive bargaining rights for the faculty. The school's policy has been to recognize the union as a responsible body, representing its members but to refuse to bargain with it.

The court found no anti-union bias in the termination of employment of the teacher and noted that only five of the 91 teachers whose employment was not renewed were identified as union members. The court said that there was no factual basis on which to grant the injunction requested by the teacher and the union on the ground of harassment because of union activities.

The union sought an injunction to force the college to bargain with it as the exclusive agent of the teachers at the college. It contended that the school was an agency of the city of New Orleans, that the city bargained collectively with other labor unions that represented city employees and, therefore, the union was denied equal protection of the law by the refusal of the school to bargain with it. Louisiana law neither commanded municipal corporations to bargain collectively with unions representing employees nor prohibited them from doing so. The court agreed that the college was an agency of the city. However, it rejected the claim that the city had acted arbitrarily in refusing to bargain with the union. The evidence that representatives of the city had met with other unions and had negotiated labor problems, the court said, fell short of proving a pattern of recognition of other unions or of any discrimination against the teachers union.

The court noted that a government official granting rights to some employees and denying them to others may constitute a denial of equal protection, but the executive branch, no less than legislative, is entitled to reasonable discretion in handling its affairs and to a range of experiment in determining its course. In the instant case, however, "no intentional or purposeful discrimination" has been shown. School teachers have been legislatively classified differently from other public employees in many ways. It is, therefore, not unreasonable and hence not unconstitutional for a legislature to exclude teachers from an act which gives other state employees the right to bargain collectively. In view of this, the court said, it would appear that equal latitude may be exercised by executive officials in determining whether or not they would bargain with teachers as well as with other classes of public employees.

The court concluded that no anti-union bias had been shown. The mere refusal of colleges to bargain collectively with a union representing some but not all of its teachers, did not constitute a denial of equal protection of the law. Therefore, the injunction was denied.

Michigan

Crestwood School District v. Crestwood Education Association
170 N.W. 2d 840
Supreme Court of Michigan,
October 6, 1969.

The school district filed a complaint, naming the local education association and others as defendants, and asking for injunctive relief. The school board alleged that its teachers had failed to report to work, and hence were on strike contrary to state statute. An injunction was issued restraining the association and those in concert with it from striking or from urging teachers to strike. Some teachers returned to work, but most submitted formal resignations. Defendants filed an appeal. In the meantime the Holland case (157 N.W. 2d 206 (1968)) was decided. The court in that case held that it was insufficient merely to show that a concert of prohibited action by public employees had taken place and that ipso facto such a showing justified injunctive relief.

Since the school district filed no brief on appeal and its attorney of record reported that he did not intend to appear or take any part in the appellate proceedings, the court reversed the judgment of the circuit court and remanded the case to it for further proceedings consistent with the Holland decision. The court said

that if, as the association claimed, the strike which was the subject of the complaint has been resolved, the complaint should be dismissed with prejudice. The Association was granted costs in the appeal.

New Hampshire

Manchester Education Association v. Superior Court
257 A. 2d 23
Supreme Court of New Hampshire, September 4, 1969.

The Manchester Education Association sought a writ of prohibition vacating and staying enforcement of a temporary injunction issued by the Superior Court. The injunction prohibited the Association and all public-school teachers in the city of Manchester from engaging in or supporting a strike or work stoppage against the Manchester school system or from taking concerted action to strike against the system, and ordered the Association to instruct its members to report to work the next day. A hearing on the merits of the city's petition for the injunction was to be held subsequently.

The court noted that a writ of prohibition is an extraordinary writ to prevent subordinate courts or other tribunals, officers, or persons from usurping or exercising jurisdiction they do not have, and should be used only with caution and forbearance and then only when the right to relief is clear. The court did not rule on any of the contentions of the parties to the controversy, but held that a writ of prohibition should not issue in the case.

New York

Central School District No. 1 v. Litz
304 N.Y.S. 372
Supreme Court of New York, Special Term, Onondaga County, October 16, 1969.

The school district sought to stay arbitration of a dispute over the provision for "teacher load" that arose under a negotiated contract entered into by the district and the local teachers association. In accord with the contract, the association proposed the arbitration after grievance proceedings it initiated did not succeed. State law provided for a stay of arbitration under certain circumstances, including the absence of a valid agreement.

The school board argued that the court could not find a valid agreement because the agreement in existence attempted to delegate nondelegable functions to an arbitrator, notwithstanding the provisions of the Taylor Act. That Act recognizes the right of public employers to submit to arbitration disputes relating to grievances arising out of terms and conditions of employment contained in a negotiated agreement. Since the statute authorizes arbitration, and the contract between the school board and the association for arbitration delimited the arbitrator's powers to rule in accordance with law, and the court retained power to accept or reject the decision, the court ruled that there had been no illegal delegation of power in the contract.

The motion for stay of arbitration was denied.

Helsby v. Board of Education of Central School District No. 2
301 N.Y.S. 2d 383
New York Supreme Court, Columbia County; Special Term, Albany County, June 11, 1969.

The Public Employment Relations Board (PERB) petitioned the court for a judgment enforcing its order directing the board of education to reinstate a teacher. The teacher had been denied tenure after having served a three-year probationary period despite the recommendation for tenure by the superintendent of schools. During her employment the teacher had served as president of the local teachers association and had taken part in professional negotiations with the board of education. The teacher filed a complaint with PERB alleging that her employment had been terminated as an act or reprisal because of her organizational activities.

The PERB held a hearing and found that the teacher had been denied tenure because of her activities in the teachers association. The school board was ordered to reinstate the teacher and to compensate her for lost pay. The school board asked the court to dismiss the PERB petition and to set aside the PERB findings on the ground that the PERB was without jurisdiction to consider and decide an alleged reprisal, and that the procedure followed by the teacher was contrary to the state tenure law.

The court reviewed the legislation applicable to teacher tenure and decided that the board had the right to deny tenure to a probationary teacher for any reason that it chose. The PERB recognized the right of the board to deny tenure, but contended that such denial of tenure could not be in violation of the teacher's right to organize, join, and participate in employee organizations under the Taylor Law. That statute did not contain any provisions relating to acts of reprisal by a public employer nor was PERB expressly empowered to prevent unfair labor practices. The PERB contended that such authority was implicit in the Taylor Law and that the exercise of such authority is necessary to effectuate its purposes.

The court found no language in the statute which indicated any intention on the part of

the legislature to give PERB the power to exercise any control over the provisions of the tenure law. Accordingly the court concluded that PERB did not have the power to hear and determine the complaint of the teacher and to issue the order directing her reinstatement. The petition of PERB was dismissed.

Helsby v. Board of Education of the City School District
304 N.Y.S. 2d 236
Supreme Court of New York, Dutchess County, September 26, 1969.

The Poughkeepsie Area Summer School Teachers' Association filed a petition with the Public Employment Relations Board (PERB) for certification as the exclusive bargaining unit for summer school teachers. The school district had previously declined recognition of this group. The PERB determined that the Association was entitled to recognition, and it instituted this suit asking that the school district be directed to comply with that order.

The school district had originally sought to dismiss the petition because there were no summer school employees at the time that it was filed. PERB had ruled that there was a sufficient continuity of employment among the summer school faculty so as to warrant their inclusion in a unit.

The court found that the Association did not come within the definition of "employee organization" under the public employer-employee negotiation law. The law, the court said, required an employer-employee relationship before a negotiating unit could be recognized.

The PERB contended that it made no difference that when the petition was filed that there were no summer school teachers, since recognition and representation of such teachers are a continuing process. The court rejected this contention and held that in enacting the law, the legislature did not intend to include within the term "employees" persons employed in a summer school program the nature of which was optional with the school district and of too short a duration to afford to the teachers a real opportunity to form, join, and participate in an employee organization or to meaningfully negotiate collectively. The court felt that since summer school would end before effective negotiations could be completed, recognition of a summer school teachers association as an "employee organization" was meaningless.

The court ruled that PERB had no jurisdiction concerning the Association since the unit was not comprised of any employees at the time that it filed its petition. The order of PERB was set aside.

Teachers of Huntington v. Board of Education, District No. 3
303 N.Y.S. 2d 469
Supreme Court of New York, Special Term, Suffolk County, Part I, July 25, 1969.

The board of education applied for a stay of arbitration proceedings commenced by the Associated Teachers of Huntington on behalf of a nontenure teacher. The contract negotiated between the teachers association and the board provided for the submission of grievances to arbitration and defined a grievance as "a claim which involves the interpretation and application of the terms and provisions of this contract." The contract also included a provision for giving of notice to nontenure teachers by March 1.

A notice of termination of services was sent to a nontenure teacher in his initial year of employment on May 1, two months after the date set forth in the contract. The teachers association filed a demand for arbitration in accordance with the contract. The school board contended that the matter was outside the scope of the grievance procedure and thus not subject to arbitration. The board cited a section of the contract which provided that termination shall not be grievable in the case of a nontenure teacher.

The court said that there was no question that a nontenure teacher was prohibited from challenging in arbitration the grounds for termination of employment. However, the prohibition did not mean that a nontenure teacher was barred from challenging the "procedure" used in terminating employment. The court found no prohibition against submitting the question of procedure to the arbitrator, and said that when there is doubt as to whether the provisions may or may not be arbitrable, the arbitrator should decide.

The board also argued that the notice of termination to nontenure teachers was void under the New York teacher tenure law which requires only 60 days' notice before the end of the probationary period if the teacher is not to be recommended for tenure. The court rejected this argument, saying that while the tenure law does not require as much notice to a nontenure teacher as the contract required, neither does it forbid earlier notice.

The court concluded that it would be remiss if it stayed the arbitration proceeding which was not prohibited by statute and which was in accordance with the public policy of the state.

North Dakota

Wahpeton Public School District No. 37 v. North Dakota Education Association
166 N.W. 2d 389
Supreme Court of North Dakota, March 19, 1969; rehearing denied April 9, 1969.

The school district, in financial straits, submitted a proposal to the district voters to

increase its taxing authority. The proposal was rejected at the polls, and as result, the school district adopted a resolution eliminating certain teaching positions. The North Dakota Education Association (NDEA) demanded that the positions be restored and suggested other ways to raise funds for needed salary increases for teachers. During the course of negotiations, NDEA stated that if matters were not settled to the satisfaction of the teachers, "sanctions" would be imposed.

A meeting between the parties was set, but before it was convened, the school district obtained a temporary restraining order preventing the Association from imposing sanctions and enjoining it from recommending to its members or to members of the National Education Association not to accept employment with the school district. The NDEA counter-claimed and obtained a temporary restraining order to prevent the school district from interfering with NDEA members or from offering any contracts or recruiting any teachers while the injunction against the Association was in effect.

At a subsequent court hearing, the restraining order against the school board was lifted, but the one against the teachers was continued for two weeks. From this order NDEA appealed. At the time the appeal was taken, the parties had reached a full settlement.

The court first decided that the order appealed from was an appealable order. While temporary orders are not generally appealable, North Dakota law provides that orders made by a district court after a hearing which refuses to set aside a previous order may be appealed.

The next question before the court was whether the appeal was moot. Besides arguing that the appeal was not moot, the NDEA asserted that the matter before the court contained issues of such overriding importance that the value of their determination as a precedent was sufficient to overcome the rule against considering moot questions.

The court ruled that the issue was moot since the school district and the teachers had settled their differences by negotiation shortly after the hearing in the lower court and there was no reason to continue in force the temporary restraining order. The court declined to apply the exception to the moot-question rule to this case, for the incomplete record from the lower court contained no evidence from which the court could determine just what "sanctions" would imply, and in what way, if any, the school district would interfere with the legal rights of the Association.

LOYALTY

Colorado

Ohlson v. Phillips
304 F. Supp. 1152
United States District Court, D. Colorado,
October 16, 1969.
Affirmed, 90 S.Ct. 1124, March 23, 1970.

Faculty members at state universities and colleges in Colorado and teachers in the Denver public schools sought an injunction restraining the implementation of a loyalty oath required by state statute of all persons employed to teach in a state school. The oath required the taker to swear or affirm that he would uphold the state and federal constitutions and faithfully perform the duties of his position. No person could enter into or continue to teach in a state school without having taken the oath.

Two previous court decisions involved Colorado loyalty oaths. The first held that the oath in effect at that time was unconstitutional. The second, Hosack v. Smiley (276 F. Supp. 876, (1967)), held valid an oath similar to the one now being challenged.

The first contention of the teachers in the present case was that the oath was vague and overbroad and in violation of the First Amendment rights of freedom of speech and association. This argument had been rejected in Hosack. The teachers argued that the change in the wording of the oath from "support" to "uphold" distinguished this case from Hosack. The court disagreed, saying that there was no significant difference between the two words so as to warrant a distinction.

The teachers claimed next that the clause, "faithfully perform the duties" of their positions, was vague, overbroad, and constitutionally infirm. Rejecting this argument, the court held that a state could reasonably ask the teachers in state schools to subscribe to professional competence and dedication. This portion of the oath, the court said, merely reflects the significant interest of the state in assuring the careful selection of teachers, and imposes no restrictions on a teacher's political expressions.

The third argument of the teachers was that the statute did not provide for a hearing upon dismissal for failure to take the oath. This issue had also been ruled on in Hosack, wherein this court said that due process did not demand a hearing with every dismissal from public employment. Since "no amount of hearing can change the fact that the person refused to take the oath," a hearing as to why he refused to take the oath would be virtually meaningless.

The teachers further complained that they were denied equal protection of the laws because teachers were the only group of public employees required to take the oath. The court noted that the oath is an almost universal requirement for public officials. Further, there is no constitutional requirement that a regulation must reach every class to which it might be applied. As long as the oath is reasonable as applied to teachers, there is no requirement that it be applied to all other groups to which its application would be equally reasonable.

Nor did the court feel that the oath impaired the obligation of the teachers' contracts as the teachers had contended. The court said that any impairment which existed was not unconstitutional since it was insubstantial when balanced against the legitimate state interest in the loyalty and qualifications of its teachers.

The last contention of the teachers was that the oath requirement constituted a bill of attainder and an ex post facto law. The court said that punishment was a prerequisite of these forbidden legislative acts. The imposition of the qualifications contained in the oath statute did not amount to punishment, and, therefore, the statue was neither ex post facto or a bill of attainder.

The court concluded that the statute was valid and dismissed the complaint of the teachers. The Supreme Court of the United States affirmed the decision.

District of Columbia

Haskett v. Washington
294 F. Supp. 912
United States District Court, District of Columbia,
December 4, 1968.

Four appointees to the faculty of the Federal City College in Washington, D. C., sought to enjoin enforcement of a statute which required them to execute appointment affidavits as a condition of receiving their salaries. The affidavits provided that the college instructor swear or affirm that he was not and would not

knowingly become a member of an organization which advocated the overthrow of our constitutional form of government.

The court held that the loyalty oath statute was unconstitutional, citing Keyishian v. Board of Regents (87 S. Ct. 675). Quoting from that case the court said that "mere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis for exclusion from such positions as those held by appellants [college professors]."

The injunction requested by the faculty appointees was granted.

LIABILITY FOR PUPIL INJURY

Connecticut

Plasse v. Board of Education of the Town of Groton
256 A. 2d 519
Superior Court of Connecticut, New London County,
June 17, 1969.

The father of a pupil injured at a track meet brought suit against the coaches and against the school board. The theory of the case against the school board was the state statute which provided for indemnification for any teacher or employee of the school board for an amount recovered against him in an action arising out of his employment.

The board of education objected to the complaint on the ground that it failed to state any legal cause of action against it since under the state indemnification statute the board's liability, if any, is to reimburse the teacher or school employee for a judgment which might be rendered against him. No direct liability runs from the board to the injured party in a tort action. The father argued that the action against the board sought only to enforce the statutory responsibility of indemnification by making the board a party defendant.

The court sustained the school board, holding that while the coaches may have an action against the board should the father succeed in recovering against them, the father had no cause of action against the board under the statute. The court based its decision on an earlier precedent that the statute provides for indemnification from loss not from liability.

The complaint was dismissed as against the school board.

Nebraska

Root v. School District No. 25 of Custer County
169 N.W. 2d 464
Supreme Court of Nebraska,
July 11, 1969.

A high-school student was injured in a fall down a school staircase after being struck from behind by one or more students. He sued the school district, members of the school board, the superintendent, and the school principal, seeking to recover damages. The complaint alleged two acts of negligence: Failure to provide adequate supervision in the halls, and failure to keep the stairway in proper condition.

The district contended that no liability existed against it under the doctrine of governmental immunity. The Supreme Court of Nebraska abrogated the doctrine of governmental immunity on June 20, 1969. However, the application of that rule was to be prospective only. The student in this case was injured on May 22, 1964, more than five years before the abrogation of governmental immunity. The court, therefore, held that the school board was not liable for its negligence or that of its employees on the date that the injury occurred. The decision of the lower court was upheld.

New Mexico

Ferreira v. Sanchez
449 P. 2d 784
Supreme Court of New Mexico,
January 6, 1969; rehearing denied February 7, 1969.

A high-school student who had been injured brought suit against another student, the teacher in charge, and the principal. The girl had been injured as a result of the alleged negligent discharge of a pistol during the senior play. The play called for the use of a gun with a blank cartridge to be fired during the performance. The student who was to fire the weapon provided his own gun which was kept in a safe in the principal's office when not in use. Prior to the last performance another student substituted a live bullet and fired the gun causing the injuries complained of in this action.

The trial court entered a judgment against the offending student, but dismissed the action as to the teacher and the principal. The injured girl appealed from the judgment dismissing the action as to those two persons.

The injured student asserted that a pistol is a dangerous weapon and that its use on school premises creates a condition that requires a high degree of care by the school authorities. She argued that the trial court incorrectly applied the standard of ordinary care. The higher court reiterated previous New Mexico decisions which held that the person charged with the duty of care must use that degree of care which a reasonably prudent person would use under the same or similar circumstances. The court found

that the harm to the student was not caused by the act of the teacher or the principal, but rather the intervening act of a third person, another student. The injured student argued that the teacher and the principal should have foreseen that unauthorized persons might inflict harm with the pistol. The court disagreed, and noted that the students in the cast were responsible and dependable and had conducted themselves in an exemplary manner at all times. No one without authority had previously touched the weapon nor was there any suspicion that anyone would bring a live bullet into the school. The court could not say as a matter of law that the intervening act of the student was foreseeable by the teachers.

The court upheld the conclusion of the lower court that the teacher and the principal were not negligent.

Virginia

Crabbe v. County School Board of Northumberland County
164 S.E. 2d 639
Supreme Court of Appeals of Virginia,
December 6, 1968.

A student injured at school sued the school board and the teacher involved. The pupil injured his hand while receiving instruction in the operation of a power table saw. The pupil alleged that because of the negligence of the school board, the saw was defective and improperly equipped, that this was known to the teacher, and that the teacher was negligent in permitting the pupil to use the defective tool and in failing to properly instruct him in its use.

The school board averred that in the operation of the school it was performing a governmental function and was therefore immune from liability. The teacher averred that this immunity extended to him. The lower court dismissed the suit and the pupil appealed.

On appeal, the court held that in the absence of a statute waiving its governmental immunity, the school board was immune from liability for the injuries sustained by the pupil. The pupil had argued that statutes waiving immunity up to the extent of insurance for injuries involving school bus accidents should be applicable to the instant case. The court disagreed and said that the statutes were plainly limited to the operation of school buses. The lower court judgment in favor of the school board was upheld.

The court did not agree, however, that the immunity of the school board extended to the teacher, and ruled that the pupil had stated a good cause of action against the teacher. The judgment in favor of the teacher was reversed, and the case was remanded for a new trial.

RETIREMENT

New Jersey

Geller v. Department of the Treasury, Division of Pensions and Annuity Fund
252 A. 2d 393
Supreme Court of New Jersey, May 5, 1969.

A Newark teacher challenged a decision of the Board of Trustees of the Teachers' Pension and Annuity Fund which held that she lost certain pension benefits because she overstayed a maternity leave. The lower court upheld the Fund and the teacher appealed.

The teacher joined the pension plan at age 19 in 1930. Her rate of contribution based on her age was 3.91 percent. In 1945, she took an approved maternity leave, but did not return to teaching for two years and four months. As a result of being absent beyond two years, she lost her membership in the retirement system. When she returned to teaching, the Fund informed her that a new account would be opened for her, but that since she was then 36 years old, the contribution rate would be 6.87 percent of her salary. She was also informed that she had rendered 13.8 years of service, and her accumulated equities would purchase 7.4 years of credit in her new account; but if she wished to purchase credit for the remaining 6.4 years of previous total service, it would be necessary to contribute at the rate of 8.6 percent or to make a lump-sum payment of $1,011.02.

Without waiting for an answer from the teacher, the Fund notified the board of education to deduct 6.87 percent of the teacher's salary as her contribution. The teacher replied to the letter from the Fund, saying that she was interested in receiving full credit for all of her years of teaching service. She authorized deductions at the legal rate due in her case. She asked additional questions concerning the Fund to which she received an answer. The increased deductions at the 8.6 percent rate were never made.

In 1966, some 18 years later, the teacher inquired about early retirement pension benefits. At this time she was informed that she had never purchased the 6.4 years prior-service credit and to do so would cost $6,487.17. The teacher requested and received a formal hearing from the Fund at which the hearing officer concluded that the 1947 authorization from the teacher was not clear. The intermediate appellate court affirmed this opinion. On further appeal, the decision was reversed.

The New Jersey Supreme Court noted that pensions to public employees are in the nature of compensation for services previously rendered and act as an inducement to continued and faithful service, and that the statutes creating such pensions should be liberally construed in favor of the persons intended to be benefited. The teacher had rendered 35 years of service to the Newark schools, and as a result of overstaying her maternity leave by four months, she was forced to rejoin the Fund at a markedly higher contribution rate. This, the court said, was a severe penalty for one who had no intention of abandoning teaching. The court felt that the letter of the teacher to the Fund authorizing "contribution at the legal rate due" was very clear. The Fund's answer to her questions was simply furnishing information requested, and there was not the slightest indication that the matter required further correspondence. In the light of the retirement board's expertise in the matter and the teacher's inexperience, it was the view of the court that if the board was not clear as to what the teacher authorized, it should have said so and sought clarification. In the judgment of the court the preponderance of the equities were with the teacher and she should not be penalized so grossly at this late date.

The court directed that the teacher be given the opportunity to purchase the prior credit at the original cost of $1,011.02 plus regular interest from November 1947. The court directed that if such payment is made or reasonably arranged for, the teacher be restored to the pension position that she would have been in had the payment been made in 1947.

Titman v. Board of Trustees of Teachers' Pension and Annuity Fund
258 A. 2d 31
Superior Court of New Jersey, Appellate Division, October 23, 1969.

A teacher appealed from a decision of the Division of Pensions that she was not entitled to a service-connected disability pension. The statute allowed a teacher to recover for permanent and total disability which was a direct result of a traumatic event occurring during and as a result of the performance of his regular and assigned duties.

The teacher sustained a disability to her left leg in 1960 while teaching a physical education class. There was proof that this disability was the result of the combined effect of a progressive condition of degenerative arthritis and either a ligament strain or fracture of the bone structure. The teacher was not then totally disabled and continued to teach until September 1966 when her right leg collapsed as she was descending a flight of stairs at school. The medical evidence indicated that the process that had caused the degeneration of the left knee had eventually affected the right knee also. The school-board doctor thought that the teacher's favoring of her left leg contributed to the collapse of the right leg.

The court concluded that the retirement board properly decided that the 1966 incident was not a "traumatic event" independently effective to sustain a claim for a disability pension; that "a previously developing degenerative process simply reached the point of collapse of the right leg at the fortuitous moment" the teacher was descending the staircase, and that this did not constitute such a traumatic event as was contemplated by the statute. Further, the teacher's ultimate total disability was not a "direct" result of the 1960 incident as required by the statute. Rather, it was only the intervention of a similar progressive condition of degenerative arthritis in the right leg, over six years later, which produced the disability of the teacher to perform her duties.

The court ruled that the teacher was not entitled to the service-connected disability pension.

New York

Ortelere v. Teachers' Retirement Board of the City of New York
303 N.Y.S. 2d 362
Court of Appeals of New York, July 2, 1969.

The surviving husband of a deceased public-school teacher sought to set aside her application for retirement on the grounds of mental incompetency. The trial court granted judgment for the husband and the retirement board appealed. The lower appellate court reversed this decision and the husband appealed.

Some years before her death the teacher had elected option one of the retirement program, naming her husband as beneficiary of the unexhausted reserve at her death. In March of 1964, the teacher suffered a "nervous breakdown" and took a leave of absence which expired on February 5, 1965. A few days after that leave expired, and while she was still under treatment, she executed a new retirement application selecting the maximum retirement allowance payable during her lifetime with nothing payable at her death. Two months later she died.

It is a well-established rule that the contracts of a mentally incompetent person who has not been adjudicated insane are voidable. Contractual mental capacity is traditionally measured by a cognitive test. Under this standard the "inquiry" is whether the mind was "so affected as to render him wholly and absolutely incompetent to comprehend and understand the nature of the transaction." At the time of her death the teacher had complete cognitive judgment.

The court noted, however, that this standard was adopted when the knowledge of psychiatry was quite primitive. There is recognition in legal writings of a more modern approach to standards of incompetency. The court applied this more modern approach and found that when the teacher acted as she did in selecting maximum allowance, she did solely as a result of serious mental illness, namely psychosis, and because of this she was unable to make a voluntary "rational" decision. There was ample medical testimony to support this finding.

The court also ruled that the retirement board had not significantly changed its position as a result of the option selection by the teacher. In this regard the court said:

> Lastly, there are no significant changes of position by the system other than those that flow from the barest actuarial consequences of benefit selection.
>
> Nor should one ignore that in the relationship between retirement system and member, and especially in a public system, there is not involved a commerical, let alone an ordinary commerical, transaction. Instead the nature of the system and its announced goal is the protection of its members and those in whom its members have an interest. It is not a sound scheme which would permit 40 years of contribution and participation in the system to be nullified by a one-instant act committed by one known to be mentally ill. This is especially true if there would be no substantial harm to the system if the act were avoided. On the record none may gainsay that her selection of a "no option" retirement while under psychiatric care, ill with cerebral arteriosclerosis, aged 60, and with a family in which she had always manifested concern, was so unwise and foolhardy that a factfinder might conclude that it was explainable only as a product of psychosis.

Accordingly, the judgment of the lower appellate court was overruled and the action remanded for a new trial.

MISCELLANEOUS

Arkansas

Freeman v. Gould Special School District of Lincoln County, Arkansas
405 F. 2d 1153
United States Court of Appeals, Eighth Circuit, January 15, 1969.

(See page 18.) Involves alleged racial discrimination in the failure to renew contracts of teachers.

California

Los Angeles Teachers Union v. Los Angeles City Board of Education
455 P. 2d 827
Supreme Court of California, June 30, 1969.

The teachers union, representing its officers and members, appealed from a decision of the lower court which denied its petition for a writ of mandate to stop the board from enforcing any regulations which prohibited teachers from circulating for signatures petitions relating to the financing of public education on school premises during duty-free periods. The petition was directed to state officials. It opposed cutbacks in funds for higher education, and urged an increase in funds for public education at all levels.

The school board did allow the teachers to meet on school premises after school hours to obtain signatures for the petition, but plaintiffs felt that this was insufficient to reach all of the teachers. In this action, they asked for permission to circulate their petition in such areas as lunchrooms and faculty rooms during the duty-free lunch period. The board produced "expert" testimony to the effect that circulation of the controversial petition would create discord among the teachers and cause a distraction to teachers who were engaged in "planning period" work rather than being "off-duty."

Since the matter involved impairment of First Amendment rights, and the facts constituting the impairment were not contradicted, the court viewed the question of permissible impairment as one of law and not of fact and therefore not subject to "expert" testimony. Any proposed impairment of First Amendment rights, the court stated, must be balanced against the interest of the board in maintaining order in the school. Teachers, like others, the court said, have the right to speak freely on public questions and to petition the government for redress of grievances. School officials also have the authority, consistent with constitutional safeguards, to prescribe and control conduct in the schools. However, "the government has no valid interest in restricting or prohibiting speech or speech-related activity simply in order to avert the sort of disturbance, argument or unrest which is inevitably generated by the expression of ideas which are controversial and invite dispute." Further, "tolerance of the unrest intrinsic to the expression of controversial ideas is constitutionally required even in the schools." The court quoted the Tinker decision of the Supreme Court (393 U.S. 503) that to justify prohibition on school premises of a particular form of expression, the school officials would have to show that their action was motivated by more than a desire to avoid the unpleasantness that accompanies an unpopular viewpoint. Similarly, to justify a restraint on political activities of teachers, the school officials must show that the restraint was a practical necessity to meet a compelling public need to protect the efficiency of the school system.

The problem in the present case, the court stated, is whether in order to speak out effectively to government on the question is financing public education, the teachers had the right to combine with their discussions in faculty rooms and lunchrooms the circulation of a petition.

Rejecting the claim of the school officials that the prohibition against circulating the controversial petition was necessary to preserve harmony and cooperation among teachers, the court said that the government had no interest in preventing the sort of disharmony which inevitably results from the mere expression of controversial ideas. The court felt that the same sort of friction that was feared by the board would result if the petition was circulated off the premises or after school hours or even from permissible discussion among the teachers of issues like those raised in this petition.

The second argument of the officials that the circulation would disturb teachers engaged in "planning period" work, was likewise rejected

by the court since the teachers explicitly stated that circulation would extend only to and be conducted by teachers who were off duty.

The board argued next that even if teachers who were working were left alone, the debate over the petition would disturb them. The board admitted that teachers discuss political matters in the lunchroom and faculty rooms, and there was no showing that conversations about the petition would generate any more disturbance than the other discussions. If debates were permissible when no petition was involved, the court saw no legitimate reason to stifle such discussion only when a petition was involved.

The court ruled that the school board had failed to demonstrate "the substantial disruption of or material interference with school activities" and therefore the circulation of the petition on school premises during duty-free periods may not be prohibited.

Florida

Braxton v. Board of Public Instruction of Duval County, Florida
303 F. Supp. 958
United States District Court, M. D. Florida, Jacksonville Division, June 6, 1969.

A Negro high-school teacher sought a mandatory injunction against the board of public instruction to force his reappointment. The evidence established that the teacher was a superior French teacher and the only black teacher on the 110-member faculty of a Duval County high school. The evidence also established that the teacher was not appointed solely on the recommendation of his principal because of the teacher's repeated refusal to comply with the request of the principal to remove his goatee. There was no written rule or established policy applicable throughout the system as to the discretion conferred on each principal relative to personal appearance. No evidence was presented that the wearing of the goatee by the teacher might reasonably be expected to or did in fact cause disruption of pupil discipline at the school.

The court held that it had jurisdiction over the matter under a previous court order which forbade the passing over or retention of any teacher because of "race or color" and placed the school board under an affirmative duty to eliminate race or color in hiring and assigning teachers.

The court ruled that the wearing of a beard by a teacher was a constitutionally protected liberty under the due process clause of the Fourteenth Amendment. Furthermore, where the beard is worn as "an appropriate expression of his heritage, culture and racial pride as a black man" its wearer enjoys the protection of First Amendment rights.

Under the circumstances, the court found that the request by the principal that the teacher remove his goatee was arbitrary, unreasonable, and based on personal preference. The court also found that the failure to reappoint the teacher was racially motivated as a matter of law and fact even though there was no specific finding as to the principal's racial attitude.

The counsel for the board argued that since the teacher was on annual contract and had not yet attained tenure, the board was not required to reappoint him. The court disagreed, saying that public employment, while not an absolute right, could not be subjected to unreasonable conditions.

The court ordered the board to reappoint the teacher and justify to the court any transfer of the teacher to another school. To assure compliance, the court retained jurisdiction of the case.

Illinois

City of Macomb v. Gould
244 N. E. 2d 634
Appellate Court of Illinois, Third District, January 9, 1969.

A teacher who struck a student at a high-school football game was found guilty of violating a city ordinance prohibiting fighting and was assessed a fine. He appealed the decision, contending that he was only enforcing discipline and that as a teacher he had the right to use corporal punishment, and that the evidence was insufficient to prove him guilty.

At the time of the incident the teacher was charged with the duty of keeping the crowds away from the fence between the stands and the playing field. The testimony indicated that the student with a number of others approached the sidelines of the field to inquire about an injured player. The teacher ordered them back to their seats, and as the student turned to go, the teacher took hold of him and started hitting him in the face. A campus policeman stopped the striking. There was conflicting testimony as to whether the student was returning to his seat, and as to whether the teacher struck the student with his fist.

The appellate court held that whether the student was walking away and whether under the circumstances there was any justification for physical acts of any kind by the teacher or that he used unreasonable force, were questions for the trial court. On the basis of the transcript, the appellate court would not override the trier of fact and affirmed the judgment.

Lewis v. Chicago State College
299 F. Supp. 1357
United States District Court, N. D. Illinois, E. D., March 19, 1969.

A Negro associate professor at Chicago State College instituted a civil rights action which claimed that the college and its officials discriminated against Negro faculty members. The teacher asked the court to promote him to a full professorship and to require the school to allow him to participate in the administration and various faculty committees. The school officials moved for summary judgment, alleging that the failure to promote the teacher resulted solely from an evaluation of his ability.

In 1967 and 1968 the teacher's department had recommended him for promotion. In 1967, the appropriate faculty committee sent his name along with the names of four white teachers to the president for promotion. The president returned all the names and urged the committee to examine the promotion criteria and also to study the issue relating to the appropriate number and percentage of full professors. Thereafter, the committee resubmitted two of the original recommendations. The plaintiff was not one of them. The following year the committee's recommendations again did not include the plaintiff's name, although they successfully recommended another Negro for promotion to a full professor.

The president and the school officials maintained that race was not an issue in their failure to promote the teacher. The court sustained this position, noting that the plaintiff's recent salary increases were among the highest at the college, that he had served both as a member of the administration and on five responsible faculty committees.

The court concluded that normally the judiciary was not the appropriate forum for decisions involving academic rank, for a professor's value depends on his creativity, rapport with students and colleagues, and on other intangible qualities that cannot be measured by objective standards. Since courts are not qualified to make such evaluations, a judicial review is proper only if illegal discrimination is clearly demonstrated.

The court found no evidence of any racial prejudice against the teacher and granted summary judgment to the college.

Louisiana

Blanchet v. Vermilion Parish School Board
220 So. 2d 534
Court of Appeal of Louisiana, Third Circuit, March 12, 1969.

A tenure teacher was charged with willful neglect of duty because he refused to wear a necktie as required of all male teachers. Following a hearing the teacher was suspended for 30 days without pay with his reinstatement to be conditioned upon an affirmative statement that he intended thereafter to comply with the necktie resolution. Prior to the expiration of the suspension the teacher filed suit to enjoin the school board from enforcing this allegedly invalid resolution or from disciplining or discharging him for failure to obey it. The trial court ruled in favor of the school board and this appeal was taken.

Reiterating previous Louisiana decisions, the appellate court said that the scope of judicial review of administrative agencies is limited to a determination of whether the action of the agency was (a) in accordance with the authority and formalities of the statute, (b) supported by substantial evidence, and (c) arbitrary and an abuse of discretion. The court further noted that parish school boards are authorized by statute to make and adopt rules and regulations not inconsistent with law or rules of the state board of education, and that tenure teachers may be disciplined or discharged for failure to comply with reasonable regulations.

The teacher did not deny that he refused to wear a necktie. His position was that only by such refusal might he secure judicial review of a regulation which he felt was arbitrary and unrelated to any educational aim as well as an infringement upon his personal liberty of dress, as long as the dress is neat and in accord with the community modes.

The evidence produced at the trial indicated that in the teacher's rural community most men did not wear ties regularly because of climate conditions. Nor had the teacher worn a tie regularly in his 18 years of teaching, although he was always neatly dressed. Wearing a necktie was uncomfortable in the spring and summer months in the unair-conditioned wooden school where the teacher worked. The trial court noted that the teacher resisted the school-board regulation out of a sincere belief that the regulation infringed upon his personal liberty.

The appellate court held that the necktie regulation was not so unreasonable as to be beyond the power of the school board to adopt. In view of the testimony by some of the educational witnesses that the teacher's formality of dress enhanced the teacher's authority in the eyes of the students, the court could not find that the regulation was unsupported by substantial evidence.

The teacher further contended that the regulation violated his personal liberties protected under the Fourteenth Amendment. The court ruled that while the constitutional issue is not free from doubt, and the teacher's contentions were not frivolous, the regulation was valid as not

unreasonably restricting the personal liberty of the teacher-employee to dress as he wills.

In considering the discipline meted out to the teacher, the court noted the respectful spirit in which he had refused to obey the regulation, and the fact that he was a dedicated and effective teacher. Notice was also taken of the fact that the suit was filed prior to the end of the suspension period. The school board was therefore directed to consider the teacher still under suspension without pay even though the 30 days had elapsed and to reinstate him to his position under the condition that he comply with the necktie regulation.

Massachusetts

Lucia v. Duggan
303 F. Supp. 112
United States District Court, D. Massachusetts, August 26, 1969.

A nontenure teacher appealed from the lower court denial of injunctive relief and damages based upon his improper dismissal from the Monson public schools. Suit had been brought against the former and current members of the Monson school committee and the superintendent of schools.

The teacher had appeared in class on January 2, 1969, with a beard. The superintendent then spoke to him and informed him that it was the unwritten policy of the school committee that teachers should be clean shaven. Following the receipt of a letter from the school committee on January 15, the teacher requested an opportunity to meet with the committee. He arrived at that meeting in an unkempt condition, having come directly from coaching a basketball game. The next day the committee voted to suspend the teacher for seven days because of insubordination and improper example set by a teacher. The teacher was never notified of the meeting or told that his suspension would be considered. On January 28, the committee met again without notifying the teacher and voted to suspend the teacher again if he returned to school with his beard. Two days later the committee met to vote on the dismissal of the teacher. Advance local publicity made the teacher aware of the imminent dismissal. His request for a postponement to obtain legal counsel was denied. The committee then voted to dismiss the teacher for specific reasons: insubordination for not complying with the school committee order to shave his beard, his improper dress at the previous meeting, and his behavior before the committee. At no time during the entire proceedings did the Monson school district have any regulation or order which prohibited teachers from wearing beards.

The thrust of the teacher's complaint was that the school authorities deprived him of the rights, privileges, and immunities secured by the Constitution. The primary contention of the teacher was that he had a constitutional right to wear a beard and his dismissal denied him that right. The court was uncertain as to the constitutional foundation of such a right. However, the court said that from wherever the teacher derived his freedom to wear a beard, it was at least an interest of his, especially in combination with his professional reputation as a school teacher, which could not be taken from him without due process of law. Further, his interest in wearing a beard and in his career as a teacher was not nullified by his nontenure status. Nor would the court accept the argument of the school system that there is no constitutional right to public employment.

The court found two substantial deficiencies in the procedure followed in suspending and disciplining the teacher. First, the teacher was never informed of the nature of the charges against him nor was he told that his failure to remove his beard would result in his dismissal. The second deficiency involved the decision-making process of the school committee. Prior to the dismissal of the teacher the Monson school district had no written or announced policy prohibiting male teachers from wearing beards in the classroom. Therefore, the proceedings against the teacher by the board involved first making a rule against the wearing of beards and then a judicial-type function that enforced this rule and resulted in the dismissal of the teacher. The court said that this merging of the legislative-type function with the judicial-type function clouded the issue and denied the teacher any right to present evidence in the judicial-type proceeding, and denied the community as a whole any right to participate in the rule-making process.

The court declared that the actions of the school committee in suspending and dismissing the teacher violated due process and were unlawful, null, and void. The teacher was awarded a judgment for lost salary as well as damages for pain and suffering connected with loss of weight and aggravated ulcer condition proximately caused by his unlawful dismissal. The teacher was entitled to the benefit of his position unless and until he was lawfully separated from that position. The school officials were restrained and enjoined from giving any effect to the suspension and dismissal.

New Jersey

Porcelli v. Titus
302 F. Supp. 726
United States District Court, D. New Jersey, August 14, 1969.

Ten white teachers employed by the Newark Board of Education brought suit under the Civil

Rights Act, alleging that school officials who had made appointments of elementary-school principals and vice-principals, discriminated against them because of their race. The teachers sought money damages and an injunction prohibiting the officials from taking any punitive action against them.

Prior to May 28, 1968, promotions to principal and vice-principal of elementary schools were made in order of numerical ranking from an appropriate list determined by virtue of scores made in a promotional examination. The negotiated contract between the teachers association and the school board also reflected this provision for promotion. On May 28, 1968, the board adopted a resolution suspending all appointments from the existing list pending an examination of that procedure. Subsequently, the board adopted a new procedure which did not utilize a competitive examination. At the same time the board made 55 temporary appointments, to promotional positions at the elementary and secondary level, 35 to white teachers and 20 to Negro teachers.

The teachers who were parties to this suit charged that the board abolished the examination procedure for the purpose of appointing Negroes to positions for which they would not otherwise be eligible.

The school officials argued that the abolition of the examination procedure was a legitimate governmental action taken to improve promotional procedures. They further argued that even if the court should find that the purpose of the action was to make more Negroes available for promotion, this was a legitimate goal in the light of past racial imbalance in the administrative ranks of the school system.

The court could find no state law mandating a competitive examination for promotion, nor was the court concerned with any claim that the teachers might have arising out of the negotiated contract. The sole question presented was whether the teachers established by a preponderance of the evidence that the board did away with the examination for the purpose of discriminating against white applicants.

Much evidence was presented concerning the racial composition of the Newark schools. As of the 1967-68 school year, the number of Negroes in administrative positions in the schools was 27, or 10 percent of a total of 259 positions; none of the 72 principal positions were held by Negroes, and only 3 of 64 vice-principals were Negro. As of September 1968, the Negro students constituted 72.5 percent of all students in the school system. There was also evidence that members of the board and administrative staff were dissatisfied with the examination procedure and did not feel that the best people were always promoted as a result of this procedure.

According to the court, the record made it clear that in the broadest connotation "race" did play a part in the board's decision to suspend the promotion lists and abandon the examination system. The court concluded that the decision of the board was made not simply to promote Negroes but to obtain for the positions qualified persons, white or Negro, whose qualifications were based on an awareness of, and sensitivity to the problems of educating the Newark school population. The court was satisfied that in abolishing the examination there was no intention on the part of the board to discriminate against white teachers or to exclude them from consideration for promotion. The complaint was, therefore, dismissed.

New Mexico

Amador v. New Mexico State Board of Education
455 P. 2d 840
Supreme Court of New Mexico, June 16, 1969.

(See page 11. Involves an issue of election to State Board of Education.)

New York

Boikess v. Aspland
247 N.E. 2d 135
Court of Appeals of New York, February 27, 1969.

Faculty members at the State University of New York at Stony Brook were subpoenaed and requested to appear before the Suffolk County Grand Jury which was investigating possible drug abuse on the university campus. According to the teachers, the district attorney intended to ask them if they had ever used illegal drugs with students, if they had ever advocated to students the use of illegal drugs, and if they had ever discussed this use or advocacy with an administrator. The teachers applied to the court to quash the subpoenas. This application was denied and the appeal followed, raising constitutional issues.

The teachers first contended that prospective defendants or targets of a grand jury investigation may not be compelled to attend a grand jury hearing. Cases were cited to support this contention. The court said the decisions cited were "clear in their requirement that the defendant or target be both called and examined in order to receive immunity from self incrimination." Therefore, those cases were inapplicable since the teachers had not appeared and been examined before the grand jury. In declining to adopt a rule to quash the subpoenas, the court concluded that a prospective defendant or target could be compelled to at least attend a grand jury investigation without violating the Fifth Amendment privilege against self-incrimination.

The teachers additionally argued that they should not be made to respond to the subpoena because they were teachers and thus entitled to protection from such inquiry under the First Amendment. In support, the teachers cited U.S. Supreme Court decisions which they contended established that the proposed questions concerning advocacy of the use of drugs must be stricken as violative of academic freedom. The court found the cited decisions clearly inapplicable and dismissed as specious the argument of the teachers that they would be intimidated in their lectures because of the potential threat of appearing before a grand jury. While statutes that attempt to curtail the right of teachers to advocate the use of drugs and discuss advocacy with an administrator would be unconstitutional, the court said, requiring a teacher to appear before a grand jury and discuss the matter is not.

The order of the lower court was affirmed.

Central School District No. 2 of the Town of Oyster Bay, Nassau County v. Cohen
302 N.Y.S. 2d 398
District Court, Nassau County, First District, April 17, 1969.

(See page 16. Involves the failure of a teacher to return to the district following the completion of a sabbatical leave.)

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